



TENNESSEE ADMINISTRATIVE REGISTER



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PREFACE

The Tennessee Administrative Register (T.A.R.) is an official publication of the Tennessee Department of State. The T.A.R. is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The T.A.R. contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Financial Institutions, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the T.A.R. after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the T.A.R., the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the T.A.R. of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the T.A.R. Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the T.A.R., they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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TABLE OF CONTENTS

ANNOUNCEMENTS

Finance and Administration (TennCare), Department of Notices of Withdrawal	5
Financial Institutions, Department of Announcement of Formula Rate of Interest	6
Maximum Effective Rate of Interest	6
Notice of Withdrawal of Rules	7
Government Operations Committee Announcement of Public Hearing	8-10
Health Services and Development Agency Notice of Beginning of Review Cycle.....	11

EMERGENCY RULES

Emergency Rules Now In Effect	12
-------------------------------------	----

PROPOSED RULES

Education, Board of	13-16
Health, Department of	17-20

PUBLIC NECESSITY RULES

Public Necessity Rules Now in Effect	21
Finance and Administration (TennCare), Department of	22-42
Health, Department of	68-71

RULEMAKING HEARINGS

Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists, Board for Professional.....	72-78
Environment and Conservation, Department of.....	79-91
Finance and Administration (TennCare), Department of	92-116
Health, Department of	117-126
Human Services, Department of	127-132

CERTIFICATE OF APPROVAL	133
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ANNOUNCEMENTS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

NOTICE OF WITHDRAWAL OF RULES

The Bureau of TennCare hereby gives notice of withdrawal of rule 1200-13-13-.11(7)(a) Appeal of Adverse Actions Affecting TennCare Services or Benefits filed with the Department of State on the 31st day of March, 2006, to have become effective on the 14th day of June, 2006.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-19)

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

NOTICE OF WITHDRAWAL OF RULES

The Bureau of TennCare hereby gives notice of withdrawal of rule 1200-13-14-.11(7)(a) Appeal of Adverse Actions Affecting TennCare Services or Benefits filed with the Department of State on the 31st day of March, 2006, to have become effective on the 14th day of June, 2006.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-20)

ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 12.00%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Greg Gonzales

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of July 2006 is 9.31 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 5.31 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Greg Gonzales

ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180 COMPLIANCE DIVISION

NOTICE OF WITHDRAWAL OF RULES

The Department of Financial Institutions hereby gives notice of withdrawal of Proposed Rule 0180-34 relative to Title Pledge Lenders – Recordkeeping and Business Practices, filed with the Department of State on the 29th day of March, 2006, to have become effective on the 28th day of July, 2006.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 10th day of May, 2006. (05-17)

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-01	May 3, 2006	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	May 3, 2006 through Oct 15, 2006
05-02	May 3, 2006	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.04 Covered Services 1200-13-14-.10 Exclusions	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	May 3, 2006 through Oct 15, 2006
05-05	May 3, 2006	0620 Finance and Administration TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-1</i> 1200-13-1-.02 Eligibility	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	July 17, 2006
05-06	May 5, 2006	1155 Podiatric Medical Examiners	Rulemaking Hearing Rules	Amendments	1155-2-.04 Qualification for Licensure 1155-2-.05 Procedures for Licensure 1155-2-.08 Examinations 1155-2-.14 Academic License 1155-3-.01 Scope of Practice and Certification	Nicole Armstrong, Health OGC 26th Fl TN Twr 312 8th Avenue North, Nashville, TN 37247-0120, (615) 741-1611	July 19, 2006
05-07	May 5, 2006	1000 Nursing	Rulemaking Hearing Rules	Amendments	1000-1-.04 Discipline of Licensees Unauthorized Practice of Professional Nursing Civil Penalties Screening Panels Subpoenas Advisory Rulings Declaratory Orders and Assessment of Costs	Richard Russell Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	July 19, 2006
05-08	May 12, 2006	1200 Health Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-1 Standards for Hospitals</i> 1200-8-1-.01 Definitions	Richard Russell Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	July 26, 2006
05-09	May 16, 2005	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-8-2 Standards for Prescribed Child Care Centers</i> 1200-8-2-.01 Definitions 1200-8-2-.08 Life Safety 1200-8-2-.12 Procedures for the Withholding of Resuscitative Services	Ernest Sykes Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	July 30, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-10	May 17, 2006	0500 Economic and Community Development Energy Division	Proposed Rules	Amendments	<i>Chapter 0500-3-4 Small Business Energy Loan Program</i> 0500-3-4-.03 Definitions 0500-3-4-.05 Repayment Period 0500-3-4-.07 Eligibility 0500-3-4-.09 Eligible Energy Efficiency Measures	Stephanie Tisdale 312 8th Ave N 11th Fl Nashville TN 615-253-2006	Sept 28, 2006
05-11	May 17, 2006	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	May 17, 2006 through Oct 29, 2006
05-12	May 17, 2006	0620 Finance and Administration Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	May 17, 2006 through
05-15	May 19, 2006	1200 Health Community Services Division	Public Necessity Rules	Amendments	<i>Chapter 1200-20-11 Rules and Regulations Governing the State Conrad J-1 Visa Waiver Program</i> 1200-20-11-.02 Definitions 1200-20-11-.04 Eligibility 1200-20-11-.05 Application Review, Approval, Denial	Kassie Wiley Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 19, 2006 through October 31, 2006
05-18	May 23, 2006	0400 Environment and Conservation Division of Solid Waste Management	Rulemaking Hearing Rules		<i>Chapter 1200-1-7 Solid Waste Processing and Disposal</i> 1200-1-7-.01 Solid Waste Disposal Control System: General 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities 1200-1-7-.03 Requirements for Financial Assurance 1200-1-7-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities 1200-1-7-.07 Fee System For Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste 1200-1-7-.09 Waste Disposal Reduction Goal 1200-1-7-.10 Convenience Centers/County Public Collection Receptacles 1200-1-7-.11 Requirements For Compost and Composting Facilities 1200-1-7-.11 Requirements for Compost and Composting Facilities	Glen Pugh Solid Waste Management L & C Twr 5th Fl 401 Church St Nashville TN 37243 (615) 532-0818	August 6, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
05-24	May 25, 2006	0520 Education	Proposed Rule	Amendments	<i>Chapter 0520-1-3</i> <i>Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.06 Graduation, Requirement	Rich Haglund State Board of Education 9th Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville TN 37243-1050 (615) 741-2966	Sept 28, 2006
05-35	May 31, 2006	1200 Health Bureau of Health Services Administration Community Services Division	Proposed Rules	Amendments	<i>Chapter 1200 20-11</i> <i>Rules and Regulations Governing the State</i> <i>Conrad J-1 Visa Waiver Program</i> 1200-20-11-.02 Definitions 1200-20-11-.04 Eligibility 1200-20-11-.05 Application, Review, Approval, Denial	Kassie Wiley OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	Sept 28, 2006

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: http://www.tennessee.gov/hsda/health_plan_agency_meet.html for the latest Notice of Beginning of Review Cycle.

EMERGENCY RULES

EMERGENCY RULES NOW IN EFFECT

For text of emergency rules see T.A.R. cited, see

<http://www.state.tn.us/sos/pub/tar/index.htm>

or

visit the Department of State's website,

http://www.state.tn.us/sos/rules/emergency/emer_index.htm

- 0080 - Department of Agriculture - Division of Regulatory Services - Emergency rules amending standards for biodiesel and biodiesel blends conveyed for consumption in Tennessee, Chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-33)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rules amending the medical fee schedule and related system, Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-29)
- 0800 - Department of Labor - Division of Workers' Compensation - Emergency Rule amending 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges), Chapter 0800-2-18 Medical Fee Schedule, 5 T.A.R., Volume 32, Number 5 (May 15, 2006). Filed April 27, 2006; effective through October 9, 2006. (04-31)
- 1340 - Department of Safety - Division of Driver License Issuance - Emergency rules covering procedures for the issuance of certificates for driving, Chapter 1340-1-13 Classified and Commercial Drivers Licenses and Certificates for Driving, 4 T.A.R., Volume 32, Number 4 (April 13, 2006). Filed March 22, 2006; effective through September 3, 2006. (03-34)

PROPOSED RULES

STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-3 MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Part 5 of subparagraph (f) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part in its entirety and substituting instead the following language so that as amended the part shall read:

5. Business Technology Education
 - (i) Computer Applications
 - (ii) Accounting I
 - (iii) Accounting II
 - (iv) American Business Legal Systems*
 - (v) Business Principles
 - (vi) Financial Planning
 - (vii) Business Economics**
 - (viii) BASIC Programming
 - (ix) C++ Programming
 - (x) JAVA Programming
 - (xi) Keyboarding
 - (xii) International Business/Marketing**
 - (xiii) eBusiness Communications

PROPOSED RULES

- (xiv) Business Management
- (xv) Keyboarding/Document Formatting
- (xvi) Keyboarding/Document Layout & Design
- (xvii) Spreadsheet Applications
- (xviii) Integrated Input Technologies
- (xix) Database Design/Management
- (xx) Administrative Management
- (xxi) Desktop Publishing
- (xxii) Computer Operating Systems and Hardware
- (xxiii) Career Connections
- (xxiv) Computer Literacy
- (xxv) Banking & Finance
- (xxvi) Interactive Multimedia Presentations
- (xxvii) Virtual Enterprise International**
- (xxviii) Web Site I - Foundations
- (xxix) Web Page Design II – Site Designer
- (xxx) Web Page Design III – eCommerce
- (xxxi) Networking Essentials
- (xxxii) Networking
- (xxxiii) Information Technology Foundations

* American Business Legal Systems satisfies one-half credit in U.S. Government.

** Business Economics or International Business/Marketing or Virtual Enterprise International satisfy one-half credit in economics.

Authority: T.C.A. §§49-1-302.

Part 8 of subparagraph (f) of paragraph (1) of Rule 0520-1-3-.06 Graduation, Requirement E is amended by deleting the part in its entirety and substituting instead the following language so that as amended the part shall read:

- 8. Trade and Industrial Education
 - (i) Career Management Success
 - (ii) Transportation Service Technology
 - (I) Transportation Core
 - (II) Aviation Maintenance I and II
 - (III) Introduction to Aerospace
 - (IV) Theory of Flight
 - (V) Automotive: Brake Systems
 - (VI) Automotive: Electrical/Electronic Systems
 - (VII) Automotive: Suspension and Steering
 - (VIII) Automotive: Engine Performance
 - (IX) Collision Repair: Non-Structural
 - (X) Collision Repair: Structural
 - (XI) Collision Repair: Painting and Refinishing
 - (XII) Diesel: Brake Systems

PROPOSED RULES

- (XIII) Diesel: Preventive Maintenance
- (XIV) Diesel: Suspension and Steering
- (XV) Diesel: Electrical/Electronics
- (XVI) Diesel: Engine
- (XVII) Leisure Craft/Small Engine Technology: Engine Performance
- (XVIII) Leisure Craft/Small Engine Technology: Systems

(iii) Construction Technology

- (I) Construction Core
- (II) Computer-Aided Drafting
- (III) Advanced Computer-Aided Drafting
- (IV) Carpentry I and II
- (V) Concrete I and II
- (VI) Masonry I and II
- (VII) Electrical I and II
- (VIII) Heating, Ventilation, Air Conditioning and Refrigeration (HVAC/R)
I and II
- (IX) Plumbing I and II
- (X) Basic Principles of Welding
- (XI) Advanced Welding Applications

(iv) Arts and Communication Technology

- (I) Visual Communications
- (II) Graphic Communications I
- (III) Graphic Communications II
- (IV) Digital Design and Imaging
- (V) Media Concepts
- (VI) Electronic Media Production
- (VII) Electronic Media Management and Operations
- (VIII) Information Technology Foundations
- (IX) Computer Operating Systems & Hardware
- (X) Networking
- (XI) Cabling Technology
- (XII) Web Site I – Foundations
- (XIII) Web Page Design II – Site Designer
- (XIV) Web Page Design III – eCommerce
- (XV) Audio Technology I
- (XVI) Audio Technology II

(v) Manufacturing Technology

- (I) Programming and Logic
- (II) Principles of Manufacturing
- (III) Principles of Machining and Manufacturing
- (IV) Manufacturing Applications
- (V) Digital Electronics
- (VI) Computer-Aided Drafting
- (VII) Advanced Computer-Aided Drafting
- (VIII) Principles of Engineering

PROPOSED RULES

- (IX) Basic Principles of Welding
- (X) Advanced Welding Applications
- (vi) Human Services
 - (I) Principles of Cosmetology
 - (II) Design Principles of Cosmetology
 - (III) Chemistry of Cosmetology
 - (IV) Criminal Justice I, II, and III
- (vii) Hospitality and Tourism
 - (I) Foundations of the Hospitality Industry
 - (II) Culinary Arts I, II, and III

Authority: T.C.A.. §§ 49-1-302.

The proposed amendments set out herein were properly filed in the Department of State on the 25th day of May, 2006, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of September, 2006. (05-24)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF HEALTH - 1200 BUREAU OF HEALTH SERVICES ADMINISTRATION COMMUNITY SERVICES DIVISION

CHAPTER 1200-20-11 RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM

Presented herein are proposed amendments of the Department of Health, Bureau of Health Services Administration, Community Service Division, submitted pursuant to Tennessee Code Annotated § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Bureau of Health Services Administration, Community Services Division, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Community Services Division on the Sixth Floor of the Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, Tennessee, 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the text of the proposed amendments, contact: Alisa Malone, Sixth Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, (615) 741-4545.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 1200-20-11-.02, Definitions, paragraph (13), entitled "Physician specialist," is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (13) Physician specialist - a physician who has completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Emergency Medicine, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery. If all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a "specialist" may also include a physician who has completed a residency in a medical specialty or subspecialty other than one listed above, if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program.

PROPOSED RULES

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.02, Definitions, paragraph (15), entitled “Rural Hospital,” is amended by replacing the word “guidelines” with “requirements” in the first sentence.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, paragraph (1), is amended by placing a period “.” after “General Internal Medicine,” inserting a new sentence, and deleting the last sentence in the paragraph, so that as amended, the paragraph shall read:

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine. The State Conrad J-1 Visa Waiver Program is limited to those physician specialists who have completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine, Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Emergency Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology- Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, is amended by inserting a new paragraph (2) and renumbering the remaining paragraphs accordingly, so that as amended, new paragraph (2) shall read:

- (2) Health care practitioners who are placed must provide medical care to underserved Tennesseans. Each applicant must be supported by a sponsoring employer. A sponsoring employer will be considered for a J-1 visa waiver placement if the primary purpose of the placement is the provision of health care services to those who live in underserved communities based on the criteria set forth herein.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (2), is amended by adding the following sentence to the beginning of the paragraph and leaving the remainder of the paragraph unchanged:

J-1 primary care physicians are placed only in rural areas of the State.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (3), is amended by deleting the entire paragraph and

PROPOSED RULES

substituting instead the following language, so that as amended, the paragraph shall read:

- (3) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with the following hospitals, as designated by the Department, that are located in a HPSA or MUA: one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients; or a Rural Referral Center hospital; or a Sole Community hospital; or a Medicare dependent hospital; or a rural hospital meeting the requirements for placement of a primary care physician. The top twenty non-psychiatric hospital list will be updated on an annual basis.

In addition, in accordance with 8 U.S.C.A. § 1184(l)(1)(D)(ii), the Department may also facilitate the placement of physician specialists in up to five (5) of the federally-permitted slots annually in affiliation with hospitals not located in a HPSA or MUA. A hospital requesting participation under 8 U.S.C.A. § 1184(l)(1)(D)(ii) must demonstrate that fifty percent (50%) or more of its patients served reside in a HPSA or MUA.

Each physician specialist must agree to practice his or her specialty in affiliation with the hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists has not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. No more than one-third of the specialist slots may be granted in an urban HPSA from October 1 to June 30 of each year.

If the full complement of slots permitted by the federal law has not been committed by June 30, the percentage limitations on the number of slots allocated to specialty physicians and on the placement of specialty physicians, set forth above, shall no longer be applicable. After June 30, all slots permitted by the federal law shall be opened to all eligible sponsoring employers for primary care physicians and specialist physicians as previously described, for the final quarter of the year. Additionally, if all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a physician who has completed a residency in a medical specialty or subspecialty other than one listed in (1) may be considered eligible for placement if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program. During the final quarter, priority for the specialist slots is given to specialists but primary care provider applications will be accepted if specialist slots are available and no other specialist provider application has been received and deemed eligible.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (4), is deleted in its entirety and the remaining paragraph renumbered accordingly.

PROPOSED RULES

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (5), is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (5) A physician specialist who requests placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all rules and regulations herein specific to primary care physicians.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.05, Application Review, Approval, Denial, paragraph (2), is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (2) If an employer proposes to utilize the J-1 primary care physician at more than one (1) site located within a HPSA and/or MUA, either of which must also be located within a HRSA, or if an employer proposes to utilize the physician specialist in affiliation with more than one (1) hospital within a HPSA or MUA or the qualifying location, the name and location of each facility and a schedule of the days and hours that the physician will be available at each site must be included in the application.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

The proposed rules set out herein were properly filed in the Department of State on the 31st day of May 2006, and in the absence of an appropriate petition calling for a rulemaking hearing, will be effective on the 28th day of September, 2006. (05-35)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

For text of public necessity rules see T.A.R. cited at

<http://www.state.tn.us/sos/pub/tar/index.htm>

or

the Department of State's website at

http://www.state.tn.us/sos/rules/necessity/nec_index.htm

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for a Presumptive Eligibility process that will provide short term temporary and limited eligibility to persons who are likely to qualify for regular institutional Medicaid eligibility pursuant to DHS Rule 1240-3-3-.02(9) and provide them with home services that will keep them out of nursing homes at no financial risk to the person, chapter 1200-13-1 General Rules, 2 T.A.R. (February 2006) - Filed January 30, 2006; effective through July 14, 2006. (01-38)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding process for review and certification, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 3, 2006; effective through August 15, 2006. (03-01)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-14, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-09)
- 0780 - Department of Commerce and Insurance - Division of Regulatory Boards - Public Necessity Rules promulgated in accordance with the "Tennessee Home Inspector License Act of 2005", chapter 0780-5-12 Home Inspectors, 5 T.A.R. (May 15, 2006) - Filed April 7, 2006, 2006; effective through September 19, 2006. (04-05)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209, and 2004 amendments to the Medical Assistance Act, T.C.A. §§ 71-5-101, et seq.

In 1994 Tennessee converted its Medicaid program from fee-for-service to managed care and named it TennCare. TennCare is funded jointly by the federal and state governments pursuant to Title XIX of the Social Security Act, also known as the Medicaid Act, 42 U.S.C. Section 1396 et seq. The State administers the program under the terms of a special demonstration waiver granted by the federal government as authorized by Section 1115 of the same Act, 42 U.S.C. Section 1315, and under those provisions of the Medicaid Act which have not been waived and remain in full force and effect. In 1998 the State entered into a Consent Decree in a lawsuit, *John B. v. Menke*, which provided specific initiatives for ensuring compliance with the requirements of Medicaid-based Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services. The Consent Decree requires that TennCare continually monitor and update its rules, policies and procedures to reflect TennCare's compliance with EPSDT and the Consent Decree. The enclosed rules reflect changes to the TennCare program relating to EPSDT compliance with the *John B. v. Menke* Consent Decree.

I have made a finding that these amendments are necessary to conform the Bureau of TennCare's rules to comply with state and federal statutory requirements and to comport with the requirements of *John B. v. Menke*.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES

OF

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-13
TENNCARE MEDICAID

AMENDMENTS

Part 6. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 6. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
6. Dental Services [defined at 42 CFR §440.100].	<p>Preventive, diagnostic, and treatment services covered as medically necessary.</p> <p>Dental services under EPSDT, including dental screens, are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary.</p> <p>Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:</p> <p>(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration</p>	<p>Not covered, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.</p>

PUBLIC NECESSITY RULES

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
	<p>will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;</p> <p>(2) following repair of an enrollee's cleft palate.</p> <p>Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare.</p> <p>If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.</p> <p>The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.</p>	

PUBLIC NECESSITY RULES

Part 13. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 13. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
13. Inpatient Hospital Services [defined at 42 CFR §440.10].	Covered as medically necessary. Preadmission and concurrent reviews allowed.	Covered as medically necessary. Preadmission and concurrent reviews allowed.

Part 14. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 14. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
14. Inpatient Rehabilitation Facility Services.	See "Inpatient Hospital Services."	Not covered.

Part 23. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 23. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
23. Organ and Tissue Transplant Services and Donor Organ/Tissue Procurement Services [defined as the transfer of an organ or tissue from an individual to a TennCare enrollee].	Covered as medically necessary. Experimental or investigational transplants are not covered.	Covered as medically necessary when coverable by Medicare. Experimental or investigational transplants are not covered.

Part 38. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 38. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
38. Rehabilitation services	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy," and "Inpatient Rehabilitation Facility Services."	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy."

Rule 1200-13-13-.10 Exclusions is deleted in its entirety and replaced with a new rule 1200-13-13-.10 which shall read as follows:

PUBLIC NECESSITY RULES

1200-13-13-.10EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (a) Provision of medical assistance which is outside the scope of benefits as defined in these rules.
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15. f. and pursuant to the DCS Interagency Agreement.
 - (c) Services for which there is no Federal Financial Participation (FFP).
 - (d) Services provided outside the United States or its territories.
 - (e) Services provided outside the geographic borders of Tennessee, including transportation to return to Tennessee to receive medical care except in the following circumstances:
 1. Emergency medical services are needed because of an emergency medical condition;
 2. Non-emergency urgent care services are requested because the recipient's health would be endangered if he were required to travel, but only upon the explicit prior authorization of the MCC;
 3. The covered medical service would not be readily available within Tennessee if the enrollee was physically located in Tennessee at the time of need and the covered service is explicitly prior authorized by the enrollee's TennCare MCC; or
 4. The out-of-state provider is participating in the enrollee's MCC network.
 - (f) Investigative or experimental services or procedures including, but not limited to:
 1. Drug or device that lacks FDA approval except when medically necessary as defined by TennCare;
 2. Drug or device that lacks approval of facility's Institutional Review Board;
 3. Requested treatment that is the subject of Phase I or Phase II clinical trials or the investigational arm of Phase III clinical trials; or
 4. A requested service about which prevailing opinion among experts is that further study is required to determine safety, efficacy, or long-term clinical outcomes of requested service.
 - (g) Services which are delivered in connection with, or required by, an item or service not covered by TennCare, including the transportation to receive such non-covered services, except that treatment of conditions resulting from the provision of non-covered

PUBLIC NECESSITY RULES

services may be covered if medically necessary, notwithstanding the exclusions set out herein.

- (h) Items or services furnished to provide a safe surrounding, including the charges for providing a surrounding free from exposure that can worsen the disease or injury.
 - (i) Non-emergency services that are ordered or furnished by an out-of-network provider and that have not been approved by the enrollee's MCC for out-of-network care.
 - (j) Services that are free to the public, with the exception of services delivered in the schools pursuant to the Individuals with Disabilities in Education Act (IDEA).
 - (k) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that has been excluded from participation in the Medicaid program under the authority of the United States Department of Health and Human Services or the Bureau of TennCare.
 - (l) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that is not licensed by the appropriate licensing board.
 - (m) Items or services outside the scope and/or authority of a provider's specialty and/or area of practice.
 - (n) Items or services to the extent that Medicare or a third party payer is legally responsible to pay or would have been legally responsible to pay except for the enrollee's or the treating provider's failure to comply with the requirements for coverage of such services.
 - (o) Medical services for inmates confined in a local, state, or federal prison, jail, or other penal or correctional facility, including a furlough from such facility.
- (2) Exception to General and Specific Exclusions: COST EFFECTIVE ALTERNATIVE. As approved by CMS and/or authorized by TSOP 032, each MCC has sole discretionary authority to provide certain cost effective alternatives when providing appropriate medically necessary care. These services are otherwise excluded and are not covered services unless the MCC has followed the procedures set forth in TSOP 032 and opts at its sole discretion to provide such requested item or service.
- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115(a) waiver program unless excepted by paragraph (2) herein. Some of these services may be covered outside TennCare under a Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.
- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21
 - 1. Air cleaners, purifiers, or HEPA filters
 - 2. Audiological therapy or training

PUBLIC NECESSITY RULES

3. Augmentative communication devices
4. Beds and bedding equipment as follows:
 - (i) Powered air flotation beds, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress

For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in body position to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.
 - (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - (vii) Pillows, hypoallergenic
 - (viii) Springbase beds
 - (ix) Vail beds, or similar bed
5. Bed baths and Sitz baths
6. Chiropractor's services
7. Convalescent care
8. Cushions, pads, and mattresses as follows:
 - (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs

PUBLIC NECESSITY RULES

9. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.
10. Ear plugs
11. Floor standers
12. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by TCA 56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight (BMI<15 kg/m²) and physically incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

13. Hearing aids, including the prescribing, fitting, or changing of hearing aids
14. Humidifiers (central or room) and dehumidifiers
15. Inpatient rehabilitation facility services
16. Medical supplies, over-the-counter, as follows:
 - (i) Alcohol, rubbing
 - (ii) Band-aids
 - (iii) Cotton balls
 - (iv) Eyewash
 - (v) Peroxide
 - (vi) Q-tips or cotton swabs
17. Methadone clinic services
18. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered
19. Orthodontic services, except as defined in Rule 1200-13-13-.04(1)(b)6. or 1200-13-13-.04(1)(b)6.
20. Certain pharmacy items as follows:
 - (i) Agents when used for anorexia or weight loss
 - (ii) Agents when used to promote fertility

PUBLIC NECESSITY RULES

- (iii) Agents when used for cosmetic purposes or hair growth
 - (iv) Agents when used for the symptomatic relief of cough and colds
 - (v) Agents when use to promote smoking cessation
 - (vi) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
 - (vii) Nonprescription drugs
 - (viii) Barbiturates
 - (ix) Benzodiazepines
21. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
 22. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
 23. Radial keratotomy
 24. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
 25. Repair of DME items not covered by TennCare
 26. Repair of DME items covered under the provider's or manufacturer's warranty
 27. Repair of a rented DME item
 28. Sitter services
 29. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
 30. Standing tables
 31. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed

PUBLIC NECESSITY RULES

to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery

- (ii) LASIK
 - (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
- 1. Alcoholic beverages
 - 2. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 3. Art therapy
 - 4. Autopsy
 - 5. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 6. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Waterbeds
 - 7. Bioenergetic therapy
 - 8. Biofeedback
 - 9. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy

PUBLIC NECESSITY RULES

- (iv) Breast implant removal
 - (v) Ear piercing
 - (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos
 - (viii) Tongue splitting or repair of tongue splitting
 - (ix) Wigs or hairpieces
10. Breathing equipment as follows:
- (i) Intrapulmonary Percussive Ventilators (IPVs)
 - (ii) Spirometers, except for peak flow meters for medical management of asthma
 - (iii) Vaporizers
11. Carbon dioxide therapy
12. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:
- (i) Day care
 - (ii) Evening care centers
 - (iii) Respite care, with the exception of crisis respite offered as a component of mental health crisis services
 - (iv) Rest cures
 - (v) Social or diversion services related to the judicial system
13. Carotid body tumor, excision of, as treatment for asthma
14. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.
15. Clothing, including adaptive clothing

PUBLIC NECESSITY RULES

16. Cold therapy devices
17. Comfort and convenience items including, but not limited to:
 - (i) Corn plasters
 - (ii) Garter belts
 - (iii) Incontinence products (diapers/liners/underpads) for persons younger than 3 years of age
 - (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.
18. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device
19. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services
20. Cosmetic prosthetic devices
21. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:
 - (i) Reconstructive surgery to correct the results of an injury or disease
 - (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
 - (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
 - (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
 - (v) Surgery for the improvement of the functioning of a malformed body member
 - (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.
22. Dance therapy
23. Dental services for adults age 21 and older

PUBLIC NECESSITY RULES

24. Services provided solely or primarily for educational purposes, including, but not limited to:
 - (i) Academic performance testing
 - (ii) Educational tests and training programs
 - (iii) Habilitation
 - (iv) Job training
 - (v) Lamaze classes
 - (vi) Lovaas therapy
 - (vii) Picture illustrations
 - (viii) Remedial education
 - (ix) Sign language instruction
 - (x) Special education
 - (xi) Tutors
25. Encounter groups or workshops
26. Environmental modifications including, but not limited to:
 - (i) Air conditioners, central or unit
 - (ii) Micronaire environmentals, and similar devices
 - (iii) Pollen extractors
 - (iv) Portable room heaters
 - (v) Vacuum systems for dust filtering
 - (vi) Water purifiers
 - (vii) Water softeners
27. Exercise equipment including, but not limited to:
 - (i) Exercise equipment
 - (ii) Exercycles (including cardiac use)
 - (iii) Functional electrical stimulation
 - (iv) Gravitronic traction devices

PUBLIC NECESSITY RULES

- (v) Gravity guidance inversion boots
 - (vi) Parallel bars
 - (vii) Pulse tachometers
 - (viii) Tilt tables
 - (ix) Training balls
 - (x) Treadmill exercisers
 - (xi) Weighted quad boots
28. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-13-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:
- (i) Low-phenylalanine or phenylalanine-free
 - (ii) Gluten-free
 - (iii) Casein-free
 - (iv) Ketogenic
29. Grooming services including, but not limited to:
- (i) Barber services
 - (ii) Beauty services
 - (iii) Electrolysis
 - (iv) Hairpieces or wigs
 - (v) Manicures
 - (vi) Pedicures
30. Hair analysis
31. Home modifications and items for use in the home
- (i) Decks
 - (ii) Enlarged doorways
 - (iii) Environmental accessibility modifications such as grab bars and ramps
 - (iv) Fences
 - (v) Furniture, indoor or outdoor

PUBLIC NECESSITY RULES

- (vi) Handrails
 - (vii) Meals
 - (viii) Overbed tables
 - (ix) Patios, sidewalks, driveways, and concrete slabs
 - (x) Plexiglass
 - (xi) Plumbing repairs
 - (xii) Porch gliders
 - (xiii) Rollabout chairs
 - (xiv) Room additions and room expansions
 - (xv) Telephone alert systems
 - (xvi) Telephone arms
 - (xvii) Telephone service in home
 - (xviii) Televisions
 - (xix) Tilt tables
 - (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
 - (xxi) Utilities (gas, electric, water, etc.)
- 32. Homemaker services
 - 33. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)
 - 34. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service
 - 35. Hypnosis or hypnotherapy
 - 36. Icterus index
 - 37. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:
 - (i) Cannot sit upright unassisted, and

PUBLIC NECESSITY RULES

- (ii) Infant/child care seats are too small or do not provide adequate support, and
 - (iii) Safe automobile transport is not otherwise possible.
38. Infertility or impotence services including, but not limited to:
- (i) Artificial insemination services
 - (ii) Purchase of donor sperm and any charges for the storage of sperm
 - (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
 - (iv) Cryopreservation and storage of cryopreserved embryos
 - (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
 - (vi) Fertility drugs
 - (vii) Home ovulation prediction kits
 - (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
 - (ix) Reversal of sterilization procedures
 - (x) Any other service or procedure intended to create a pregnancy
 - (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence
39. Lamps such as:
- (i) Heating lamps
 - (ii) Lava lamps
 - (iii) Sunlamps
 - (iv) Ultraviolet lamps
40. Lifts as follows:
- (i) Automobile van lifts
 - (ii) Electric powered recliner, elevating seats, and lift chairs
 - (iii) Elevators
 - (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation

PUBLIC NECESSITY RULES

to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.

- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators
- 41. Ligation of mammary arteries, unilateral or bilateral
- 42. Megavitamin therapy
- 43. Motor vehicle parts and services including, but not limited to:
 - (i) Automobile controls
 - (ii) Automobile repairs or modifications
- 44. Music therapy
- 45. Nail analysis
- 46. Naturopathic services
- 47. Necropsy
- 48. Nerve stimulators, except for vagus nerve stimulators after conventional therapy has failed in treating partial onset of seizures
- 49. Organ and tissue transplants that have been determined experimental or investigational
- 50. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-13-.04(1)(b)23., including, but not limited to:
 - (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any “bundled rates” after the donor is discharged from the hospital
- 51. Oxygen, except when provided under the order of a physician and administered under the direction of a physician

PUBLIC NECESSITY RULES

52. Oxygen, preset system (flow rate not adjustable)
53. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
54. Play therapy
55. Primal therapy
56. Psychodrama
57. Psychogenic sexual dysfunction or transformation services
58. Purging
59. Recertification of patients in Level 1 and Level II Nursing Facilities
60. Recreational therapy
61. Religious counseling
62. Retreats for mental disorders
63. Rolfing
64. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
 - (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
65. Sensitivity training or workshops
66. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
 - (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines

PUBLIC NECESSITY RULES

- (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs
 - (vii) Suspension swings
 - (viii) Trampolines
 - (ix) Therapy balls
 - (x) Weighted blankets or weighted vests
- 67. Sensory stimulation services
 - 68. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household
 - 69. Sex change or transformation surgery
 - 70. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
 - 71. Speech devices as follows:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
 - 72. Sphygmomanometers (blood pressure cuffs)
 - 73. Stethoscopes
 - 74. Supports
 - (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
 - 75. Thermograms
 - 76. Thermography
 - 77. Time involved in completing necessary forms, claims, or reports
 - 78. Tinnitus maskers
 - 79. Toy equipment such as:

PUBLIC NECESSITY RULES

Flash switches (for toys)

80. Transportation costs as follows:

- (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
- (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
- (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)

81. Transsexual surgery

82. Weight loss or weight gain and physical fitness programs including, but not limited to:

- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
- (ii) Health clubs, membership fees (e.g., YMCA)
- (iii) Marathons, activity and entry fees
- (iv) Swimming pools

83. Wheelchairs as follows:

- (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.
- (ii) Standing wheelchairs
- (iii) Stair-climbing wheelchairs
- (iv) Recreational wheelchairs

PUBLIC NECESSITY RULES

84. Whirlpools and whirlpool equipment such as:

- (i) Action bath hydro massage
- (ii) Aero massage
- (iii) Aqua whirl
- (iv) Aquasage pump, or similar devices
- (v) Hand-D-Jets, or similar devices
- (vi) Jacuzzis, or similar devices
- (vii) Turbojets
- (viii) Whirlpool bath equipment
- (ix) Whirlpool pumps

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 3rd day of May, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 15th day of October, 2006. (05-01)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules to the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. §4-5-209, and 2004 amendments to the Medical Assistance Act, T.C.A. §§71-5-101, *et seq.*

On August 3 and August 9, 2005, a federal district court issued Orders in which the Court approved modifications of certain provisions of the *Grier Revised Consent Decree*. The *Grier Revised Consent Decree* imposes obligations upon the Bureau of TennCare with respect to ensuring the rights of individuals enrolled in TennCare, a managed care program for both the Medicaid and expansion populations, including timelines for the prior authorization of certain services by the managed care contractors. On December 29, 2005, the State promulgated public necessity rules implementing the approved modifications. Subsequently, on January 31, 2006, the federal district court issued a ruling which clarified certain of its earlier Orders, including that failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall still result in automatic authorization of the requested service. This public necessity rule is required in order to bring the TennCare rules into compliance with the federal court's January 31, 2006 ruling.

Tennessee Code Annotated, Section 4-5-209, provides that a state agency is authorized to promulgate public necessity rules when the modifications to the rules are required by a court order. Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that this amendment is required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J.D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13
TENNCARE MEDICAID**

AMENDMENT

Subparagraph (a) of paragraph (7) of Rule 1200-13-13-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-13-.11(1)(b)2. Failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall result in automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8).

Authority: T.C.A. 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 17th day of May, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 29th day of October, 2006. (05-12)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE MEDICAID**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209, and 2004 amendments to the Medical Assistance Act, T.C.A. §§ 71-5-101, et seq.

In 1994 Tennessee converted its Medicaid program from fee-for-service to managed care and named it TennCare. TennCare is funded jointly by the federal and state governments pursuant to Title XIX of the Social Security Act, also known as the Medicaid Act, 42 U.S.C. Section 1396 et seq. The State administers the program under the terms of a special demonstration waiver granted by the federal government as authorized by Section 1115 of the same Act, 42 U.S.C. Section 1315, and under those provisions of the Medicaid Act which have not been waived and remain in full force and effect. In 1998 the State entered into a Consent Decree in a lawsuit, *John B. v. Menke*, which provided specific initiatives for ensuring compliance with the requirements of Medicaid-based Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services. The Consent Decree requires that TennCare continually monitor and update its rules, policies and procedures to reflect TennCare's compliance with EPSDT and the Consent Decree. The enclosed rules reflect changes to the TennCare program relating to EPSDT compliance with the *John B. v. Menke* Consent Decree.

I have made a finding that these amendments are necessary to conform the Bureau of TennCare's rules to comply with state and federal statutory requirements and to comport with the requirements of *John B. v. Menke*.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES

OF

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE MEDICAID

AMENDMENTS

Part 6. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 6. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
6. Dental Services [defined at 42 CFR §440.100].	<p>Preventive, diagnostic, and treatment services covered as medically necessary.</p> <p>Dental services under EPSDT, including dental screens, are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary.</p> <p>Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:</p> <p>(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration</p>	<p>Not covered, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.</p>

PUBLIC NECESSITY RULES

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
	<p>will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;</p> <p>(2) following repair of an enrollee's cleft palate.</p> <p>Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare.</p> <p>If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.</p> <p>The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.</p>	

PUBLIC NECESSITY RULES

Part 13. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 13. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
13. Inpatient Hospital Services [defined at 42 CFR §440.10].	Covered as medically necessary. Preadmission and concurrent reviews allowed.	Covered as medically necessary. Preadmission and concurrent reviews allowed.

Part 14. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 14. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
14. Inpatient Rehabilitation Facility Services.	See "Inpatient Hospital Services."	Not covered.

Part 23. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 23. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
23. Organ and Tissue Transplant Services and Donor Organ/Tissue Procurement Services [defined as the transfer of an organ or tissue from an individual to a TennCare enrollee].	Covered as medically necessary. Experimental or investigational transplants are not covered.	Covered as medically necessary when coverable by Medicare. Experimental or investigational transplants are not covered.

Part 38. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 38. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
38. Rehabilitation services	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy," and "Inpatient Rehabilitation Facility Services."	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy."

Rule 1200-13-14-.10 Exclusions is deleted in its entirety and replaced with a new rule 1200-13-14-.10 which shall read as follows:

PUBLIC NECESSITY RULES

1200-13-14-.10EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (a) Provision of medical assistance which is outside the scope of benefits as defined in these rules.
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15. f. and pursuant to the DCS Interagency Agreement.
 - (c) Services for which there is no Federal Financial Participation (FFP).
 - (d) Services provided outside the United States or its territories.
 - (e) Services provided outside the geographic borders of Tennessee, including transportation to return to Tennessee to receive medical care except in the following circumstances:
 1. Emergency medical services are needed because of an emergency medical condition;
 2. Non-emergency urgent care services are requested because the recipient's health would be endangered if he were required to travel, but only upon the explicit prior authorization of the MCC;
 3. The covered medical service would not be readily available within Tennessee if the enrollee was physically located in Tennessee at the time of need and the covered service is explicitly prior authorized by the enrollee's TennCare MCC; or
 4. The out-of-state provider is participating in the enrollee's MCC network.
 - (f) Investigative or experimental services or procedures including, but not limited to:
 1. Drug or device that lacks FDA approval except when medically necessary as defined by TennCare;
 2. Drug or device that lacks approval of facility's Institutional Review Board;
 3. Requested treatment that is the subject of Phase I or Phase II clinical trials or the investigational arm of Phase III clinical trials; or
 4. A requested service about which prevailing opinion among experts is that further study is required to determine safety, efficacy, or long-term clinical outcomes of requested service.
 - (g) Services which are delivered in connection with, or required by, an item or service not covered by TennCare, including the transportation to receive such non-covered services, except that treatment of conditions resulting from the provision of non-covered

PUBLIC NECESSITY RULES

services may be covered if medically necessary, notwithstanding the exclusions set out herein.

- (h) Items or services furnished to provide a safe surrounding, including the charges for providing a surrounding free from exposure that can worsen the disease or injury.
 - (i) Non-emergency services that are ordered or furnished by an out-of-network provider and that have not been approved by the enrollee's MCC for out-of-network care.
 - (j) Services that are free to the public, with the exception of services delivered in the schools pursuant to the Individuals with Disabilities in Education Act (IDEA).
 - (k) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that has been excluded from participation in the Medicaid program under the authority of the United States Department of Health and Human Services or the Bureau of TennCare.
 - (l) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that is not licensed by the appropriate licensing board.
 - (m) Items or services outside the scope and/or authority of a provider's specialty and/or area of practice.
 - (n) Items or services to the extent that Medicare or a third party payer is legally responsible to pay or would have been legally responsible to pay except for the enrollee's or the treating provider's failure to comply with the requirements for coverage of such services.
 - (o) Medical services for inmates confined in a local, state, or federal prison, jail, or other penal or correctional facility, including a furlough from such facility.
- (2) Exception to General and Specific Exclusions: COST EFFECTIVE ALTERNATIVE. As approved by CMS and/or authorized by TSOP 032, each MCC has sole discretionary authority to provide certain cost effective alternatives when providing appropriate medically necessary care. These services are otherwise excluded and are not covered services unless the MCC has followed the procedures set forth in TSOP 032 and opts at its sole discretion to provide such requested item or service.
- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115(a) waiver program unless excepted by paragraph (2) herein. Some of these services may be covered outside TennCare under a Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.
- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21
 - 1. Air cleaners, purifiers, or HEPA filters
 - 2. Audiological therapy or training

PUBLIC NECESSITY RULES

3. Augmentative communication devices
4. Beds and bedding equipment as follows:
 - (i) Powered air flotation beds, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress

For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in body position to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.
 - (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - (vii) Pillows, hypoallergenic
 - (viii) Springbase beds
 - (ix) Vail beds, or similar bed
5. Bed baths and Sitz baths
6. Chiropractor's services
7. Convalescent care
8. Cushions, pads, and mattresses as follows:
 - (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs

PUBLIC NECESSITY RULES

9. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.
10. Ear plugs
11. Floor standers
12. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by TCA 56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight (BMI<15 kg/m2) and physically incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

13. Hearing aids, including the prescribing, fitting, or changing of hearing aids
14. Humidifiers (central or room) and dehumidifiers
15. Inpatient rehabilitation facility services
16. Medical supplies, over-the-counter, as follows:
 - (i) Alcohol, rubbing
 - (ii) Band-aids
 - (iii) Cotton balls
 - (iv) Eyewash
 - (v) Peroxide
 - (vi) Q-tips or cotton swabs
17. Methadone clinic services
18. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered
19. Orthodontic services, except as defined in Rule 1200-13-14-.04(1)(b)6. or 1200-13-14-.04(1)(b)6.
20. Certain pharmacy items as follows:
 - (i) Agents when used for anorexia or weight loss
 - (ii) Agents when used to promote fertility

PUBLIC NECESSITY RULES

- (iii) Agents when used for cosmetic purposes or hair growth
 - (iv) Agents when used for the symptomatic relief of cough and colds
 - (v) Agents when use to promote smoking cessation
 - (vi) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
 - (vii) Nonprescription drugs
 - (viii) Barbiturates
 - (ix) Benzodiazepines
- 21. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
 - 22. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
 - 23. Radial keratotomy
 - 24. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
 - 25. Repair of DME items not covered by TennCare
 - 26. Repair of DME items covered under the provider's or manufacturer's warranty
 - 27. Repair of a rented DME item
 - 28. Sitter services
 - 29. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
 - 30. Standing tables
 - 31. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed

PUBLIC NECESSITY RULES

to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery

- (ii) LASIK
 - (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
- 1. Alcoholic beverages
 - 2. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 3. Art therapy
 - 4. Autopsy
 - 5. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 6. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Waterbeds
 - 7. Bioenergetic therapy
 - 8. Biofeedback
 - 9. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy

PUBLIC NECESSITY RULES

- (iv) Breast implant removal
 - (v) Ear piercing
 - (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos
 - (viii) Tongue splitting or repair of tongue splitting
 - (ix) Wigs or hairpieces
10. Breathing equipment as follows:
- (i) Intrapulmonary Percussive Ventilators (IPVs)
 - (ii) Spirometers, except for peak flow meters for medical management of asthma
 - (iii) Vaporizers
11. Carbon dioxide therapy
12. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:
- (i) Day care
 - (ii) Evening care centers
 - (iii) Respite care, with the exception of crisis respite offered as a component of mental health crisis services
 - (iv) Rest cures
 - (v) Social or diversion services related to the judicial system
13. Carotid body tumor, excision of, as treatment for asthma
14. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.
15. Clothing, including adaptive clothing

PUBLIC NECESSITY RULES

16. Cold therapy devices
17. Comfort and convenience items including, but not limited to:
 - (i) Corn plasters
 - (ii) Garter belts
 - (iii) Incontinence products (diapers/liners/underpads) for persons younger than 3 years of age
 - (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.
18. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device
19. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services
20. Cosmetic prosthetic devices
21. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:
 - (i) Reconstructive surgery to correct the results of an injury or disease
 - (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
 - (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
 - (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
 - (v) Surgery for the improvement of the functioning of a malformed body member
 - (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.
22. Dance therapy
23. Dental services for adults age 21 and older

PUBLIC NECESSITY RULES

24. Services provided solely or primarily for educational purposes, including, but not limited to:
 - (i) Academic performance testing
 - (ii) Educational tests and training programs
 - (iii) Habilitation
 - (iv) Job training
 - (v) Lamaze classes
 - (vi) Lovaas therapy
 - (vii) Picture illustrations
 - (viii) Remedial education
 - (ix) Sign language instruction
 - (x) Special education
 - (xi) Tutors
25. Encounter groups or workshops
26. Environmental modifications including, but not limited to:
 - (i) Air conditioners, central or unit
 - (ii) Micronaire environmentals, and similar devices
 - (iii) Pollen extractors
 - (iv) Portable room heaters
 - (v) Vacuum systems for dust filtering
 - (vi) Water purifiers
 - (vii) Water softeners
27. Exercise equipment including, but not limited to:
 - (i) Exercise equipment
 - (ii) Exercycles (including cardiac use)
 - (iii) Functional electrical stimulation
 - (iv) Gravitronic traction devices

PUBLIC NECESSITY RULES

- (v) Gravity guidance inversion boots
 - (vi) Parallel bars
 - (vii) Pulse tachometers
 - (viii) Tilt tables
 - (ix) Training balls
 - (x) Treadmill exercisers
 - (xi) Weighted quad boots
28. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-14-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:
- (i) Low-phenylalanine or phenylalanine-free
 - (ii) Gluten-free
 - (iii) Casein-free
 - (iv) Ketogenic
29. Grooming services including, but not limited to:
- (i) Barber services
 - (ii) Beauty services
 - (iii) Electrolysis
 - (iv) Hairpieces or wigs
 - (v) Manicures
 - (vi) Pedicures
30. Hair analysis
31. Home modifications and items for use in the home
- (i) Decks
 - (ii) Enlarged doorways
 - (iii) Environmental accessibility modifications such as grab bars and ramps
 - (iv) Fences
 - (v) Furniture, indoor or outdoor

PUBLIC NECESSITY RULES

- (vi) Handrails
 - (vii) Meals
 - (viii) Overbed tables
 - (ix) Patios, sidewalks, driveways, and concrete slabs
 - (x) Plexiglass
 - (xi) Plumbing repairs
 - (xii) Porch gliders
 - (xiii) Rollabout chairs
 - (xiv) Room additions and room expansions
 - (xv) Telephone alert systems
 - (xvi) Telephone arms
 - (xvii) Telephone service in home
 - (xviii) Televisions
 - (xix) Tilt tables
 - (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
 - (xxi) Utilities (gas, electric, water, etc.)
- 32. Homemaker services
 - 33. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)
 - 34. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service
 - 35. Hypnosis or hypnotherapy
 - 36. Icterus index
 - 37. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:
 - (i) Cannot sit upright unassisted, and

PUBLIC NECESSITY RULES

- (ii) Infant/child care seats are too small or do not provide adequate support, and
 - (iii) Safe automobile transport is not otherwise possible.
38. Infertility or impotence services including, but not limited to:
- (i) Artificial insemination services
 - (ii) Purchase of donor sperm and any charges for the storage of sperm
 - (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
 - (iv) Cryopreservation and storage of cryopreserved embryos
 - (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
 - (vi) Fertility drugs
 - (vii) Home ovulation prediction kits
 - (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
 - (ix) Reversal of sterilization procedures
 - (x) Any other service or procedure intended to create a pregnancy
 - (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence
39. Lamps such as:
- (i) Heating lamps
 - (ii) Lava lamps
 - (iii) Sunlamps
 - (iv) Ultraviolet lamps
40. Lifts as follows:
- (i) Automobile van lifts
 - (ii) Electric powered recliner, elevating seats, and lift chairs
 - (iii) Elevators
 - (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation

PUBLIC NECESSITY RULES

to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.

- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators
- 41. Ligation of mammary arteries, unilateral or bilateral
- 42. Megavitamin therapy
- 43. Motor vehicle parts and services including, but not limited to:
 - (i) Automobile controls
 - (ii) Automobile repairs or modifications
- 44. Music therapy
- 45. Nail analysis
- 46. Naturopathic services
- 47. Necropsy
- 48. Nerve stimulators, except for vagus nerve stimulators after conventional therapy has failed in treating partial onset of seizures
- 49. Organ and tissue transplants that have been determined experimental or investigational
- 50. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)23., including, but not limited to:
 - (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any “bundled rates” after the donor is discharged from the hospital
- 51. Oxygen, except when provided under the order of a physician and administered under the direction of a physician

PUBLIC NECESSITY RULES

52. Oxygen, preset system (flow rate not adjustable)
53. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
54. Play therapy
55. Primal therapy
56. Psychodrama
57. Psychogenic sexual dysfunction or transformation services
58. Purging
59. Recertification of patients in Level 1 and Level II Nursing Facilities
60. Recreational therapy
61. Religious counseling
62. Retreats for mental disorders
63. Rolfing
64. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
 - (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
65. Sensitivity training or workshops
66. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
 - (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines

PUBLIC NECESSITY RULES

- (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs
 - (vii) Suspension swings
 - (viii) Trampolines
 - (ix) Therapy balls
 - (x) Weighted blankets or weighted vests
- 67. Sensory stimulation services
 - 68. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household
 - 69. Sex change or transformation surgery
 - 70. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
 - 71. Speech devices as follows:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
 - 72. Sphygmomanometers (blood pressure cuffs)
 - 73. Stethoscopes
 - 74. Supports
 - (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
 - 75. Thermograms
 - 76. Thermography
 - 77. Time involved in completing necessary forms, claims, or reports
 - 78. Tinnitus maskers
 - 79. Toy equipment such as:

PUBLIC NECESSITY RULES

Flash switches (for toys)

80. Transportation costs as follows:

- (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
- (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
- (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)

81. Transsexual surgery

82. Weight loss or weight gain and physical fitness programs including, but not limited to:

- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
- (ii) Health clubs, membership fees (e.g., YMCA)
- (iii) Marathons, activity and entry fees
- (iv) Swimming pools

83. Wheelchairs as follows:

- (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.
- (ii) Standing wheelchairs
- (iii) Stair-climbing wheelchairs
- (iv) Recreational wheelchairs

84. Whirlpools and whirlpool equipment such as:

PUBLIC NECESSITY RULES

- (i) Action bath hydro massage
- (ii) Aero massage
- (iii) Aqua whirl
- (iv) Aquasage pump, or similar devices
- (v) Hand-D-Jets, or similar devices
- (vi) Jacuzzis, or similar devices
- (vii) Turbojets
- (viii) Whirlpool bath equipment
- (ix) Whirlpool pumps

Authority: T.C.A. §§4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 3rd day of May, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 15th day of October, 2006. (05-02)

PUBLIC NECESSITY RULES

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14
TENNCARE STANDARD**

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

I am herewith submitting amendments to the rules to the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209, and 2004 amendments to the Medical Assistance Act, T.C.A. § 71-5-101, *et seq.*

On August 3 and August 9, 2005, a federal district court issued Orders in which the Court approved modifications of certain provisions of the *Grier Revised Consent Decree*. The *Grier Revised Consent Decree* imposes obligations upon the Bureau of TennCare with respect to ensuring the rights of individuals enrolled in TennCare, a managed care program for both the Medicaid and expansion populations, including timelines for the prior authorization of certain services by the managed care contractors. On December 29, 2005, the State promulgated public necessity rules implementing the approved modifications. Subsequently, on January 31, 2006, the federal district court issued a ruling which clarified certain of its earlier Orders, including that failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall still result in automatic authorization of the requested service. This public necessity rule is required in order to bring the TennCare rules into compliance with the federal court's January 31, 2006 ruling.

Tennessee Code Annotated, Section 4-5-209, provides that a state agency is authorized to promulgate public necessity rules when the modifications to the rules are required by a court order. Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that this amendment is required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J.D. Hickey
Deputy Commissioner
Tennessee Department of Finance
and Administration

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
CHAPTER 1200-13-14
TENNCARE STANDARD
AMENDMENT**

Subparagraph (a) of paragraph (7) of Rule 1200-13-14-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. Failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall result in automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-14-.11(8).

Authority: *T.C.A. §§4-5-209, 71-5-105, 71-5-109; Executive Order No. 23.*

The Public Necessity rules set out herein were properly filed in the Department of State on the 17th day of May, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 29th day of October, 2006. (05-12)

PUBLIC NECESSITY RULES

THE TENNESSEE DEPARTMENT OF HEALTH - 1200 COMMUNITY SERVICES DIVISION

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to federal law and state law, certain changes are required to be made to the Department's rules pertaining to Conrad J-1 Visa Waiver physicians. In addition, the Tennessee General Assembly, on April 14, 2004, amended Tenn. Code Ann., Title 68, Chapter 1, Part 1, and empowered the Commissioner of Health to promulgate public necessity rules pertaining to Conrad J-1 Visa Waivers, including the ability to modify specialist types and percentage of specialist placements in the urban areas primary care and specialty providers. Because amendment of these rules is required by an agency of the federal government, promulgation of these rules through ordinary rulemaking procedures might jeopardize the loss of a federal program or funds.

For complete copies of the text of the notice, please contact Alisa Malone, Sixth Floor, Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee, 37247, (615) 741-4545.

Kenneth S. Robinson, M.D.
Commissioner
Tennessee Department of Health

PUBLIC NECESSITY RULES OF THE TENNESSEE DEPARTMENT OF HEALTH COMMUNITY SERVICES DIVISION

CHAPTER 1200-20-11 RULES AND REGULATIONS GOVERNING THE STATE CONRAD J-1 VISA WAIVER PROGRAM

AMENDMENTS

Rule 1200-20-11-.02, Definitions, paragraph (13), entitled "Physician specialist," is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (13) Physician specialist - a physician who has completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Emergency Medicine, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery. If all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a "specialist" may also

PUBLIC NECESSITY RULES

include a physician who has completed a residency in a medical specialty or subspecialty other than one listed above, if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.02, Definitions, paragraph (15), entitled “Rural Hospital,” is amended by replacing the word “guidelines” with “requirements” in the first sentence.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, paragraph (1), is amended by placing a period “.” after “General Internal Medicine,” inserting a new sentence, and deleting the last sentence in the paragraph, so that as amended, the paragraph shall read:

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine. The State Conrad J-1 Visa Waiver Program is limited to those physician specialists who have completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Emergency Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology- Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, is amended by inserting a new paragraph (2) and renumbering the remaining paragraphs accordingly, so that as amended, new paragraph (2) shall read:

- (2) Health care practitioners who are placed must provide medical care to underserved Tennesseans. Each applicant must be supported by a sponsoring employer. A sponsoring employer will be considered for a J-1 visa waiver placement if the primary purpose of the placement is the provision of health care services to those who live in underserved communities based on the criteria set forth herein.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (2), is amended by adding the following sentence to the beginning of the paragraph and leaving the remainder of the paragraph unchanged:

J-1 primary care physicians are placed only in rural areas of the State.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

PUBLIC NECESSITY RULES

Rule 1200-20-11-.04, Eligibility, current paragraph (3), is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (3) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with the following hospitals, as designated by the Department, that are located in a HPSA or MUA: one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients; or a Rural Referral Center hospital; or a Sole Community hospital; or a Medicare dependent hospital; or a rural hospital meeting the requirements for placement of a primary care physician. The top twenty non-psychiatric hospital list will be updated on an annual basis.

In addition, in accordance with 8 U.S.C.A. § 1184(l)(1)(D)(ii), the Department may also facilitate the placement of physician specialists in up to five (5) of the federally-permitted slots annually in affiliation with hospitals not located in a HPSA or MUA. A hospital requesting participation under 8 U.S.C.A. § 1184(l)(1)(D)(ii) must demonstrate that fifty percent (50%) or more of its patients served reside in a HPSA or MUA.

Each physician specialist must agree to practice his or her specialty in affiliation with the hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists has not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. No more than one-third of the specialist slots may be granted in an urban HPSA from October 1 to June 30 of each year.

If the full complement of slots permitted by the federal law has not been committed by June 30, the percentage limitations on the number of slots allocated to specialty physicians and on the placement of specialty physicians, set forth above, shall no longer be applicable. After June 30, all slots permitted by the federal law shall be opened to all eligible sponsoring employers for primary care physicians and specialist physicians as previously described, for the final quarter of the year. Additionally, if all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a physician who has completed a residency in a medical specialty or subspecialty other than one listed in (1) may be considered eligible for placement if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program. During the final quarter, priority for the specialist slots is given to specialists but primary care provider applications will be accepted if specialist slots are available and no other specialist provider application has been received and deemed eligible.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

Rule 1200-20-11-.04, Eligibility, current paragraph (4), is deleted in its entirety and the remaining paragraph renumbered accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.

PUBLIC NECESSITY RULES

Rule 1200-20-11-.04, Eligibility, current paragraph (5), is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (5) A physician specialist who requests placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all rules and regulations herein specific to primary care physicians.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.*

Rule 1200-20-11-.05, Application Review, Approval, Denial, paragraph (2), is amended by deleting the entire paragraph and substituting instead the following language, so that as amended, the paragraph shall read:

- (2) If an employer proposes to utilize the J-1 primary care physician at more than one (1) site located within a HPSA and/or MUA, either of which must also be located within a HRSA, or if an employer proposes to utilize the physician specialist in affiliation with more than one (1) hospital within a HPSA or MUA or the qualifying location, the name and location of each facility and a schedule of the days and hours that the physician will be available at each site must be included in the application.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-1-103, and 68-1-121.*

The public necessity rules set out herein were properly filed in the Department of State on the 19th day of May, 2006, and will be effective from the date of filing for a period of 165 days, through the 31st day of October, 2006. (05-15).

RULEMAKING HEARINGS

BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS - 0450

There will be a hearing before the Tennessee Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of July, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, Third Floor, Heritage Place Building, 227 French Landing, Nashville, TN 37243-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, Third Floor, Heritage Place Building, 227 French Landing, Nashville, TN 37243-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 0450-1-.19, Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting subparagraph (5) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (5) (e) shall read:

- (5) (e) Appoint designee(s), when appropriate, to assist in the performance of its duties;
and

Authority: *T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102.*

Rule 0450-2-.04, Qualifications for Licensure, is amended by deleting subparagraph (3) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (c) shall read:

- (3) (c) Pass the Tennessee jurisprudence exam pursuant to Rule 0450-2-.08

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, and 63-22-107.*

RULEMAKING HEARINGS

Rule 0450-2-.05, Procedures for Licensure, is amended by deleting subparagraphs (1) (l), (4) (a), and (5) (g) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (l), (4) (a), and (5) (g) shall read:

- (1) (l) An applicant, upon being deemed eligible by the board, shall be required to pass examinations, pursuant to rule 0450-2-.08.
- (4) (a) The board may issue a license to an individual who holds current clinical certification by the American Association for Marriage and Family Therapy, however, an applicant for licensure by endorsement will be required to take the Tennessee jurisprudence examination, pursuant to rule 0450-2-.08.
- (5) (g) To replace the temporary licensure with a regular license, the applicant shall notify the board in writing, using a form provided by the board, and present supporting documentation demonstrating the satisfactory completion of the required Post Master's supervised experience in a clinical setting. The board shall then grant or deny the regular license application, based on satisfactory completion of all requirements for licensure, including passing the Tennessee jurisprudence examination, pursuant to rule 0450-2-.08

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, 63-22-107, and 63-22-121.

Rule 0450-2-.06, Fees, is amended by deleting part (4) (b) 1. in its entirety and substituting instead the following language, so that as amended, the new part (4) (b) 1. shall read:

- (4) (b) 1. Application \$200.00

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, and 63-22-107.

Rule 0450-2-.07, Application Review, Approval, Denial, Interviews, is amended by deleting paragraph (6) and part (9) (a) 2. in their entirety and substituting instead the following language, so that as amended, the new paragraph (6) and the new part (9) (a) 2. shall read:

- (6) The board may at its discretion delay a decision on eligibility to take the written examination and/or the Tennessee jurisprudence examination for any applicant for whom the board wishes additional information for the purpose of clarifying information previously submitted. This request is to be in writing and shall be made within sixty (60) days from the date of the official review of the application by the board.
- (9) (a) 2. The applicant fails to sit for the written examination, if applicable, or the Tennessee jurisprudence examination within six (6) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, and 63-22-107.

RULEMAKING HEARINGS

Rule 0450-2-.08 Examinations, is amended by deleting the language of the rule in its entirety and substituting instead the following language, so that as amended, the new introductory language and the new paragraphs (1), (2), (3), (4) and (5) shall read:

0450-2-.08 EXAMINATIONS. Except as provided in this rule, an individual seeking licensure shall be required to pass the Board-approved written examination and the Tennessee jurisprudence examination. Except as provided in this rule, passing the written examination is a prerequisite to taking the Tennessee jurisprudence examination.

- (1) Written Examination - The written examination shall be passed by all applicants except those who upgrade or are approved for licensure by reciprocity pursuant to rule 0450-2-.04.
 - (a) The Board adopts as its written examination for marital and family therapist licensure the Professional Examination Service (PES) published examination or their successor examination, as developed by the Association of Marital and Family Therapy Regulatory Boards.
 - (b) Upon being deemed eligible, the Board shall send an examination admissions form to approved applicants.
 - (c) The applicant shall complete the examination admissions form and return it to PES.
 - (d) PES shall provide the applicant information to schedule the examination at Prometric Testing Centers.
 - (e) PES shall notify the Board and the applicant of the written examination results.
 - (f) Passing scores on the examination are determined by PES. Such passing scores as certified to the Board by PES are adopted by the Board as constituting successful completion of the written examination. A passing score will qualify the applicant for the Tennessee jurisprudence examination, if all other requirements pursuant to rule 0450-2-.05 have been successfully completed.
- (2) Tennessee Jurisprudence Examination - The Tennessee jurisprudence examination is required for all applicants except those approved to upgrade from CMFT to LMFT. This examination is administered by a Board-approved testing agency.
 - (a) Application for, admission to, and the fee required to sit for the Tennessee jurisprudence examination is governed by and must be submitted directly to the Board-approved testing agency.
 - (b) The passing score for the Tennessee jurisprudence examination is determined by the testing agency. The passing score as certified to the Board by the testing agency is adopted by the Board as constituting successful completion of the Tennessee jurisprudence examination.
 - (c) The scope and content of the examination shall be determined by the Board but limited to:
 1. Tennessee Code Annotated, Title 63, Chapters 2 and 22; and
 2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapter 0450-2.

RULEMAKING HEARINGS

- (d) If the applicant has met all other requirements, a passing score will qualify him/her for licensure.
- (3) If an applicant neglects, fails, or refuses to take or re-take either the written examination or the Tennessee jurisprudence examination, or fails to pass either examination within twelve (12) months after being deemed eligible by the Board, the application will be denied. However, such an applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet the requirements in effect at the time of the new application.
- (4) Re-examination
 - (a) Applicants who fail to pass the written examination may apply for re-examination by submitting such a request to the Board's administrative office on or before the forty-fifth (45th) day after the letter notifying the applicant of the examination results is sent.
 - (b) Applicants who fail to pass the Tennessee jurisprudence examination may apply for re-examination to the Board-approved testing agency. The applicant must continue to retake the Tennessee jurisprudence examination until it has been successfully completed before licensure will be granted.
- (5) The Board may, at its discretion, delay a decision on eligibility to take the written examination, the Tennessee jurisprudence examination or re-examination of either for any applicant for whom the Board wishes additional information for the purpose of clarifying information previously submitted. This request for additional information is to be in writing and shall be made within sixty (60) days from the date of the official review of the application by the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-103, 63-22-106, and 63-22-107.

Rule 0450-2-.19, Board Meetings, Officers, Consultants, Records, and Declaratory Orders, is amended by deleting subparagraph (5) (e) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (5) (e) shall read:

- (5) (e) Appoint designee(s), when appropriate, to assist in the performance of its duties;
and

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102.

Rule 0450-3-.04, Qualifications for Licensure, is amended by deleting subparagraph (1) (e), part (2) (a) 3. and part (2) (b) 4. in their entirety and substituting instead the following language, so that as amended, the new subparagraph (1) (e), part (2) (a) 3. and part (2) (b) 4. shall read:

- (1) (e) Pass the examination pursuant to Rule 0450-3-.08.
- (2) (a) 3. Pass the examination pursuant to Rule 0450-3-.08.
- (2) (b) 4. Pass the examination pursuant to Rule 0450-3-.08.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, and 63-22-205.

RULEMAKING HEARINGS

Rule 0450-3-.05, Procedures for Licensure, is amended by deleting subparagraphs (1) (l), (1) (m), (2) (h) and (3) (g) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (l), (1) (m), (2) (h) and (3) (g) shall read:

- (1) (l) An applicant shall direct the appropriate examination service to submit directly to the Board's Administrative Office evidence that he/she passed the professional section of the examination, pursuant to Rule 0450-3-.08.
- (1) (m) An applicant, who has met all other requirements upon being deemed eligible by the Board, shall be required to pass the Tennessee jurisprudence section of the examination, pursuant to Rule 0450-3-.08.
- (2) (h) An applicant, who has met all other requirements upon being deemed eligible by the Board, shall be required to pass the examination, pursuant to Rule 0450-3-.08.
- (3) (g) An applicant, who has met all other requirements upon being deemed eligible by the Board, shall be required to pass the examination, pursuant to Rule 0450-3-.08.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, and 63-22-205.

Rule 0450-3-.06, Fees, is amended by deleting subparagraph (4) (g) in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 63-22-102.

Rule 0450-3-.07, Application Review, Approval, and Denial, is amended by deleting paragraph (6) and part (9) (a) 2. in their entirety and substituting instead the following language, so that as amended, the new paragraph (6) and the new part (9) (a) 2. shall read:

- (6) The Board may at its discretion delay a decision on eligibility to take the professional and/or Tennessee jurisprudence sections of the examination for any applicant for whom the Board wishes additional information for the purpose of clarifying information previously submitted. This request is to be in writing and shall be made within sixty (60) days from the date of the official review of the application by the Board.
- (9) (a) 2. The applicant fails to sit for the written section of the examination, if applicable, or the Tennessee jurisprudence section of the examination within six (6) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, and 63-22-205.

Rule 0450-3-.08 Examinations, is amended by deleting the language of the rule in its entirety and substituting instead the following language, so that as amended, the new introductory sentence and the new paragraphs (1), (2), (3), (4), and (5) shall read:

0450-3-.08 EXAMINATIONS. In addition to having filed an application, individuals seeking licensure as a Clinical Pastoral Therapist are required to pass an examination consisting of professional and Tennessee jurisprudence sections.

- (1) Professional section - The professional section of the examination shall be passed by all applicants, except certain persons who are licensed by professional experience.

RULEMAKING HEARINGS

- (a) The Board adopts the following examinations or their successor examinations as the professional section of the examination:
 - 1. The Marital and Family Therapy Examination, published by the Professional Examination Service (PES), as developed by the Association of Marital and Family Therapy Regulatory Boards and with a passing score determined by PES.
 - 2. The National Counselor Examination and the National Clinical Mental Health Counseling Examination given by the National Board for Certified Counselors (NBCC) and with a passing score determined by NBCC.
 - 3. The Examination for Professional Practice in Psychology (EPPP) provided by PES and with a passing score as determined by the Association of State and Provincial Psychology Boards.
 - 4. The written examination adopted by the Association of Social Work Boards (ASWB) and with a passing score as determined by ASWB.
 - (b) Even though the Board adopts the above-listed examinations as its professional section, an applicant must successfully complete only one (1) of these examinations. The choice of which examination to successfully complete is entirely up to the applicant.
 - (c) The testing agencies govern the examination dates.
 - (d) A passing score on the professional section will qualify the applicant for the Tennessee jurisprudence section if the Board determines all other requirements pursuant to Rule 0450-3-.05 have been successfully completed.
- (2) Tennessee jurisprudence section - The Tennessee jurisprudence section of the examination is required for all applicants except applicants who are applying by certain professional experience or by certification in certain other professions pursuant to Rule 0450-3-.05. This section of the examination is administered by a Board-approved testing agency.
- (a) Application for, admission to, and the fee required to sit for the Tennessee jurisprudence section is governed by and must be submitted directly to the Board-approved testing agency.
 - (b) The passing score for the Tennessee jurisprudence section is determined by the testing agency. The passing score as certified to the Board by the testing agency is adopted by the Board as constituting successful completion of the Tennessee jurisprudence section.
 - (c) The scope and content of the Tennessee jurisprudence section shall be determined by the Board but limited to:
 - 1. Tennessee Code Annotated, Title 63, Chapters 2 and 22; and
 - 2. Official Compilation, Rules and Regulations of the State of Tennessee, Chapter 0450-2.
 - (d) If the applicant has met all other requirements, a passing score will qualify him/her for licensure.

RULEMAKING HEARINGS

- (3) If an applicant neglects, fails, or refuses to take or re-take either the professional section or the Tennessee jurisprudence section, or fails to pass either section within twelve (12) months after being deemed eligible by the Board, the application will be denied. However, such an applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet the requirements in effect at the time of the new application.
- (4) Re-examination
 - (a) Applicants who fail to pass the professional section may apply for re-examination by submitting such a request to the Board's administrative office on or before the forty-fifth (45th) day after the letter notifying the applicant of the professional section results is sent.
 - (b) Applicants who fail to pass the Tennessee jurisprudence section may apply for re-examination to the Board-approved testing agency. The applicant must continue to retake the Tennessee jurisprudence section until it has been successfully completed before licensure will be granted.
- (5) The Board may, at its discretion, delay a decision on eligibility to take the written section, the Tennessee jurisprudence section or re-examination of either for any applicant for whom the Board wishes additional information for the purpose of clarifying information previously submitted. This request for additional information is to be in writing and shall be made within sixty (60) days from the date of the official review of the application by the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-203, and 63-22-205.

The notice of rulemaking set out herein was properly filed in the Department of State on the 23rd day of May, 2006. (05-16)

RULEMAKING HEARINGS

DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 BOARD OF WATER AND WASTEWATER OPERATOR CERTIFICATION

There will be a series of three (3) public hearings before the Department of Environment and Conservation on behalf of the Board of Water and Wastewater Operator Certification to consider the adoption and promulgation of amendments to rules pursuant to The Water Environmental Health Act T.C.A. § 68-221-901 et seq. and The Uniform Administrative Procedures Act T.C.A. § 4-5-101 et seq. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place on the dates and the times and locations listed below:

July 31, 2006	9:00 a.m. CDT	Classroom 101 J. R. Fleming Environmental Training Center 2022 Blanton Drive Murfreesboro, TN
August 1, 2006	9:00 a.m. CDT	Training Room Jackson Energy Authority 604 S. Royal St. Jackson, TN
August 3, 2006	9:00 a.m. EDT	Conference Room Knoxville Environmental Assistance Center 3711 Middlebrook Pike Knoxville, TN

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation or review. Such contact may be in person, by writing, by telephone, or other means and should be made no less than ten days prior to the scheduled meeting date (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 1-615-532-0200 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this notice of rulemaking hearing, contact W. Brent Ogles, Technical Secretary, Board of Water and Wastewater Operator Certification, c/o Fleming Training Center, 2022 Blanton Drive, Murfreesboro, TN 37129, (615) 898-8090.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-5-3 RULES GOVERNING WATER AND WASTEWATER OPERATOR CERTIFICATION

Part 3 of subparagraph (b) of paragraph (1) of rule 1200-5-3-.01, Application For Certificate, is amended by deleting the language of the part and replacing it with the following so that, as amended, part 3 shall read as follows:

3. A copy of any verifying document in support of an application must be submitted with the application unless the applicant has previously provided such documentation

RULEMAKING HEARINGS

to the Secretary of the Board. This includes, but is not limited to, proof of high school education or equivalent of the applicant. College transcripts, if needed to document experience credit, must be submitted directly from the college and/or university to the Secretary to the Board. Credit for enrollment in special training courses and programs will only be granted to an applicant upon verification that he/she satisfactorily completed all course or program requirements. If training credit is requested, a copy of a course attendance card, a class roster, or a certificate of completion must be submitted to the Secretary. Verification of work experience must be provided in a written document signed by a certified operator of a similar or higher classification, familiar with the applicant's work experience. However, if no such person is available, it may be documented by a person in authority with the system. The Board may exempt applicants from the verification of work experience requirement where there are unusual circumstances.

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-202, 68-221-906, and 68-221-910.

Paragraph (6) of rule 1200-5-3-.04, General, is amended by deleting the language of the paragraph and replacing it with the following so that, as amended, paragraph (6) shall read as follows:

- (6) It is permissible for one (1) certified operator to have the responsibility for more than one (1) water and/or wastewater system if items (a) through (e) below are met. A certified operator wanting the responsibility for more than one water and/or wastewater system is required to provide to the Department a written request. A request must be made for each and every additional system. The certified operator is prohibited from assuming responsibility for an additional system until approval has been granted by the Department. In determining whether a certified operator is available to the system as required under the Act, the Department will approve or disapprove each request to supervise multiple facilities based on the following conditions:
 - (a) The systems are located so as to permit reasonable travel time between work areas with sufficient time remaining to perform necessary routine supervisory maintenance and operational activity for each system. As a guide, fifty (50) miles is considered an acceptable distance.
 - (b) The size and complexity of the system would allow the duties of operation to be properly divided among two or more systems. Certified operators in direct charge of a III or IV surface water or wastewater system are prohibited from operating more than one (1) III or IV surface water or wastewater system at a time due to the complexity and size of such systems.
 - (c) In order to demonstrate oversight, supervision and availability to the system, the certified operator shall develop a Standard Operating Procedure for each system that shall be submitted to the Department with the written request. If the certified operator cannot have a daily on-site presence, the Standard Operating Procedure must identify the person on-site daily who, under the supervision of the certified operator, is authorized in writing to collect samples, perform analyses, contact the certified operator as needed and make day-to-day decisions regarding the operation of the system.
 - (d) In order to demonstrate that the duties of operation can be properly divided among two or more systems, the certified operator must develop a written plan to coordinate

RULEMAKING HEARINGS

his/her required activities for systems under his/her supervision and control. The plan shall include a schedule for on-site visits by the certified operator. A log of actual site visits shall be prepared and kept on-site as part of the records of the system.

- (e) In order to demonstrate his/her ability to adequately supervise the work of others in more than one facility, the Department may take into consideration the compliance status of systems currently under the control and supervision of the certified operator. A certified operator is prohibited from assuming the responsibility of additional systems if any of his/her current systems have non-compliance issues. However, the Board reserves the right to allow certified operators to request the right to assume responsibility of additional systems if the non-compliance issues are not attributable to the certified operator's negligence of the system for which he/she is responsible.

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-202, 68-221-903, 68-221-904, 68-221-906, 68-221-907, 68-221-909, and 68-221-912.

Paragraph (3) of rule 1200-5-3-.06, Classification of Water Treatment Plants and Water Distribution Systems, is amended by deleting the language of the paragraph and replacing it with the following so that, as amended, paragraph (3) shall read as follows:

(3) Types of Water Systems:

- (a) Water Treatment. A water treatment plant using filtration, iron removal, and/or lime-soda softening processes or requiring chemical or bacteriological control of operation will be classified in accordance with the following point totals:

Grade IV	61 or more points
Grade III	35 to 60 points
Grade II	16 to 34 points
Grade I	15 or less points

Point totals for plant classification shall be computed in accordance with the following rating value criteria:

Rating Value
Points

Design Flow - For every one million gallons per day design capacity, or fraction thereof, a plant will be awarded a rating value of:.....1 pt.

Water Supply Source - Based upon the type and quality of the raw water source, a plant will be awarded rating values of:

Groundwater	3 pts.
Ground water under the direct influence of surface water	5 pts.
Surface water	5 pts.
Average raw water quality	0-10 pts.*

RULEMAKING HEARINGS

Treatment Process - A plant employing any of the following treatment processes will be awarded rating values of:

Aeration	4 pts.
Presettling	2 pts.
Flash mix	2 pts.
Coagulation	6 pts.
Flocculation	5 pts.
Settling	5 pts.
Upflow Solids Contact	8 pts.
Lime softening	5 pts.
Gravity Filtration	
slow sand	2 pts.
rapid	6 pts.
Pressure Filtration	3 pts.
Recarbonation	3 pts.
Membrane Filtration	10 pts.
Activated alumina	10 pts.
Ion Exchange	5 pts.

Chemical Treatment - A plant utilizing any of the following chemicals or chemical treatment processes will be awarded rating values of:

Fluoridation	3 pts.
Disinfection	
Gaseous chlorine	5 pts.
Liquid or powdered chlorine	3 pts.
Chlorine dioxide	7 pts.
Ozonization (on-site generation)	10 pts.
On-site generation of Chlorine	5 pts.
Mixed Oxidants	7 pts.
UV Light	3 pts.
Peroxide	3 pts.
Taste and Odor Control	
Potassium Permanganate	2 pts.
Powdered activated carbon	4 pts.
Activated carbon columns	6 pts.
Activated carbon slurry	8 pts.
Chemical Stabilization	
(polyphosphate, Soda Ash, etc.)	4 pts.

Laboratory Control by Plant Personnel - Based upon the type and the difficulty of the laboratory work performed at a plant, a plant will be awarded rating values of:

Bacteriological	0-10 pts.*
Chemical	0-10 pts.*

Total Points **

* See Table 1

** If a rating value points total would not accurately reflect special conditions at a plant and a material distortion in its rating would occur, the Board will establish the classification of the plant after a review of its special conditions.

RULEMAKING HEARINGS

Table 1

*Average Raw Water Quality - Points are assigned to a plant as follows:

Raw water quality varies enough to require treatment process changes less than thirty-six days each calendar year..... 2 pts.

Raw water quality varies enough to require treatment process changes thirty-six days or more each calendar year. 5 pts.

Raw water quality varies enough to require treatment process changes due to existing industrial waste pollution sources. 10 pts.

*Laboratory Control by Plant Personnel (Bacteriological) - Points are assigned in accordance with the type of laboratory control performed at the plant:

Lab work done outside of plant. 0 pts.

MMO-MUG procedure 4 pts.

Membrane filter procedure..... 5 pts.

Fermentation tubes or any dilution method. 7 pts.

Biological identification. 10 pts.

*Laboratory Control by Plant Personnel (Chemical) - Points are assigned in accordance with the type of laboratory control performed at the plant:

Lab work done outside the plant. 0 pts.

Colorimetric methods for simple tests such as chlorine, pH. 3 pts.

Procedures such as titration, jar tests..... 5 pts.

More advanced determinations including inorganics. 7 pts.

Highly sophisticated instrumentation such as atomic absorption and gas chromatography..... 10 pts.

- (b) Grade I Distribution. This classification is for a water distribution system that serves at least fifty service connections but no more than five thousand service connections. This classification serves as a certificate to operate a small water system.
- (c) Grade II Distribution. This classification is for a water distribution system that serves more than five thousand service connections. This classification serves as a certificate to operate a small water system.
- (d) Small Water Systems. This classification includes all water systems which have a ground water source not under the direct influence of surface water and serve less than fifty (50) service connections, provided the system does not use any treatment other than disinfection, and those systems which purchase water for resale and serve less than fifty (50) service connections. This classification serves as a distribution system certification for those systems meeting the definition of a small water system.

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-202, 68-221-906, and 68-221-907.

RULEMAKING HEARINGS

Rule 1200-5-3-.07, Classifications and Qualifications of Water Treatment Plant Operators and Water Distribution System Operators, is amended by deleting the language of the Rule in its entirety and replacing it with the following so that, as amended, Rule 1200-5-3-.07 shall read as follows:

1200-5-3-.07 CLASSIFICATIONS AND QUALIFICATIONS OF WATER TREATMENT PLANT OPERATORS AND WATER DISTRIBUTION SYSTEM OPERATORS.

(1) (a) Grade IV Surface Water Treatment Plant Operator

Certification as an operator in this classification will be made only upon the satisfactory completion by the applicant of the requirements of either subparagraph part (1)(a)1 or (1)(a)2 of this rule.

1. An applicant must have a bachelor degree in engineering, chemistry or a related science from an accredited college or university, must have twelve months of operating experience at a Grade III or a Grade IV surface water treatment plant, and must satisfactorily complete a written examination.
2. An applicant must have a high school education or equivalent, must have sixty months of operating experience at a Grade III or a Grade IV surface water treatment plant, and must satisfactorily complete a written examination. Within the discretion of the Board, college course work in related science or engineering courses satisfactorily completed or Board sanctioned comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training, may be credited toward the required operating experience to a maximum equivalency of thirty-six months.
3. To receive full time operating experience credit, a minimum of 100% of the activities must be work experience duties. The Board reserves the right to adjust calendar months of experience to a reduced number of months of experience if it finds that an applicant's experience routinely includes other duties. The Board encourages documented apprenticeship training programs and classroom training provided by the employer to better prepare an operator to make decisions in plant operation to assure public health protection.
4. Ground water under the direct influence of surface water with full treatment is the same as a surface water treatment system.

(b) Grade III Surface Water Treatment Plant Operator

1. An applicant must have a high school education or equivalent, must have twelve months of operating experience at a Grade III surface water treatment plant or twelve months at a Grade II and six months at a Grade III surface water treatment plant, and must satisfactorily complete a written examination. Board sanctioned comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training programs may be credited toward the required operating experience to a maximum equivalency of three months.
2. To receive full time operating experience credit, a minimum of 50% of the activities must be work experience duties.

RULEMAKING HEARINGS

3. Ground water under the direct influence of surface water with full treatment or direct filtration is the same as a surface water treatment system.

(c) Grade IV Ground Water Treatment Plant Operator

Certification as an operator in this classification will be made only upon the satisfactory completion by the applicant of the requirements of either subparagraph part (1)(c)1 or (1)(c)2 of this rule.

1. An applicant must have a bachelor degree in engineering, chemistry or a related science from an accredited college or university, must have twelve months of operating experience at a Grade III or a Grade IV surface or ground water treatment plant, and must satisfactorily complete a written examination.
2. An applicant must have a high school education or equivalent, must have sixty months of operating experience at a Grade III or a Grade IV surface or ground water treatment plant, and must satisfactorily complete a written examination. Within the discretion of the Board, college course work in related science or engineering courses satisfactorily completed or Board sanctioned comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training, may be credited toward the required operating experience to a maximum equivalency of thirty-six months.
3. To receive full time operating experience credit, a minimum of 100% of the activities must be work experience duties. The Board reserves the right to adjust calendar months of experience to a reduced number of months of experience if it finds that an applicant's experience routinely includes other duties. The Board encourages documented apprenticeship training programs and classroom training provided by the employer to better prepare an operator to make decisions in plant operation to assure public health protection.

(d) Grade III Ground Water Treatment Plant Operator

1. An applicant must have a high school education or equivalent, must have twelve months of operating experience at a Grade III surface or ground water treatment plant or twelve months at a Grade II and six months at a Grade III surface or ground water treatment plant, and must satisfactorily complete a written examination. Board sanctioned comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training programs may be credited toward the required operating experience to a maximum equivalency of three months.
2. To receive full time operating experience credit, a minimum of 50% of the activities must be work experience duties.

(e) Grade II Water Treatment Plant Operator

1. An applicant must have a high school education or equivalent, must have twelve months of operating experience at a Grade I or a Grade II Water Treatment plant, and must satisfactorily complete a written examination. Board sanctioned

RULEMAKING HEARINGS

comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training programs may be credited toward the required operating experience to a maximum equivalency of three months.

2. To receive full time operating experience credit, a minimum of 33% of the activities must be work experience duties.

(f) Grade I Water Treatment Plant Operator

1. An applicant must have a high school education or equivalent, must have twelve months of operating experience at a Grade I water treatment plant or a small water system, and must satisfactorily complete a written examination. Board sanctioned comprehensive training in chemistry, bacteriology, and the fundamentals of water treatment satisfactorily completed through schools for operators, correspondence courses, or other special training programs may be credited toward the required operating experience to a maximum equivalency of three months.
2. To receive full time operating experience credit, a minimum of 33% of the activities must be work experience duties.

(g) Small Water System Operator

An applicant must have a high school education or equivalent, and must have three months of experience in a water system classified as “small water system” and must satisfactorily complete a written examination.

- ### (h) Small ground water systems classified as a Small Water System, Grade I Water System, or Grade II Water System that use a cartridge filtration system with a 1.0 absolute micron filter certified to remove cryptosporidium or giardia cysts without any additional pretreatment will not change the classification of the system.

(i) Grades I & II Water Distribution System Operator

1. An applicant must have a high school education or equivalent, must have twelve months of operating experience at a water distribution system, and must satisfactorily complete a written examination. Board sanctioned comprehensive training including installation, operation, maintenance and repair of distribution systems, satisfactorily completed through schools for operators, correspondence courses, or other special training programs may be credited toward the required operating experience to a maximum equivalency of three months.
2. To receive full time operating experience credit, a minimum of 50% of the activities must be work experience duties.

(2) Initial Reclassifications under this Chapter of Rules

- (a) The reclassification of a water treatment plant or a water distribution system that immediately occurs as a result of this chapter of rules shall not reduce the operator classification of a certified operator then employed at that plant or system to a lower operator classification.

RULEMAKING HEARINGS

- (b) The reclassification of a water treatment plant or a water distribution system that immediately occurs as a result of this chapter of rules shall raise the operator classification of a certified operator then employed at that plant or system to a higher operator classification equivalent with the new classification of the plant or system. This subparagraph (2)(b) shall apply only to a certified operator whose operator classification, immediately prior to reclassification of the plant or system pursuant to this chapter of rules, is at least equivalent with the classification of the plant or system at which he/she is employed.
 - (c) An applicant for examination who is employed at a water treatment plant or a water distribution system that has been reclassified by the Department and certified at the appropriate level, may have his/her experience at the facility applied at a rate equal to the level of the reclassified facility.
 - (d) An operator classification authorized under prior rules that is eliminated upon this chapter of rules becoming effective shall be reclassified to the highest comparable operator classification authorized under these rules.
 - (e) An operator' classification may be changed by the Board if the operator is employed at a water plant or distribution system that been incorrectly classified by the Department for one year or more. The operator must hold a valid certificate equal to the incorrect plant or system classification and must have applied for and achieved the certificate based on the incorrect classification.
- (3) Operating Experience Credit for Approved Study
- (a) For subparagraph part (1)(a)2 and (1)(c)2 of this rule, the Board may approve for each two semester hours, or three quarter hours, of academic study satisfactorily completed at an accredited college or university in related science or engineering courses as equal to one month of the operating experience required as a qualification of a certified water treatment plant operator.
 - (b) For subparagraph parts (1)(a)2, (1)(b)1, (1)(c)2, (1)(d)1, (1)(e)1, (1)(f)1, and (1)(i)1 of this rule, each day of Board sanctioned comprehensive training, satisfactorily completed, through schools for operators, correspondence courses, or other special training programs may be equal to one month of the operating experience required as a qualification of a certified water treatment plant operator.
- (4) Work Experience
- (a) The Board may approve the water treatment operating experience required in sub-paragraph parts (1)(a)1, (1)(a)2, (1)(b)1, (1)(c)1, (1)(c)2, (1)(d)1, (1)(e)1, and (1)(f)1 of this rule in two or more of the following work experience duties:

Operation and/or maintenance of:

Pretreatment systems
Coagulant feed systems
Filtration systems
Fluoride feed systems
Stabilization feed systems
Hypochlorination systems

RULEMAKING HEARINGS

Gas chlorination systems
Disinfection systems
Pumps and/or motors
Laboratory Control Tests
Interpretation and plant adjustments

- (b) An operator applying for a Grade IV water treatment system certification may be granted partial credit by the Board for up to sixty percent of any approved operating experience obtained in a wastewater system.
- (c) The Board may approve the distribution system operating experience required in subparagraph part (1)(i)1 of this rule in two or more of the following work experience duties:

Operation and/or maintenance of:

Pumps
Booster stations
Fire hydrants
Valves
Storage tanks
Distribution system flushing
Pipeline installation
Tap installation
Leak detection
Leak repairs
Cross connection control

- (5) Summary of Water Treatment Plant and Distribution System Operator Education and Experience Requirements

Water Treatment Plant Operators

Classification	Experience			Maximum Training or College Class work Substitution	Maximum Related Work Substitution
	Experience needed with:	HS Education	BS Degree		
Grade IV Surface Water	Gained at a Grade III or IV Surface Water Plant	*60 months	12 Months	36 Months	36 Months
Grade IV Ground-water	Gained at a Grade III or IV Surface or Ground Water Plant	*60 months	12 Months	36 Months	36 Months
*Regardless of the substitution allowances, a minimum of 1 year of actual work experience is required					
Grade III Ground Water	Gained at a Grade III Surface Water Plant	12 Months		3 Months	
	Gained at a Grade II and Gained at a Grade III Surface Water Plant	12 Months 6 Months		3 Months	

RULEMAKING HEARINGS

Grade III Ground Water	Gained at a Grade II and Gained at a Grade III Surface Water Plant	12 Months 6 Months		3 Months	
	Gained at a Grade III Surface or Ground Water Plant	12 months		3 Months	
Grade II	Gained at a Grade I or II Water Plant	12 months		3 Months	
Grade II	Gained at a Grade I Water Plant or SWS	12 months		3 Months	
Grade SWS	Gained at a Small Water System (SWS)	3 Months			

Distribution System Operators

Classifica- tion	Experience		Maximum Training or College Class work Substitution	Maximum Related Work Substitution
	Experience needed with:	HS Education		
Grade II	Gained at a Distribution I or II System	12 months	3 Months	
Grade I	Gained at a Distribution I or II System	12 months	3 Months	

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-202, 68-221-906, and 68-221-907.

Paragraph (8) of rule 1200-5-3-.11, Revocation of Certificate, is amended by deleting the language of the paragraph and replacing it with the following so that, as amended, paragraph (8) shall read as follows:

- (8) An operator whose certificate is revoked for failure to use reasonable care, judgment or the application of operator knowledge in performing the operator's duties or for incompetency shall be ineligible to again apply for certification as an operator for a minimum of one year. An operator whose certificate is revoked for practicing fraud or deception, willfully violating regulations or permit conditions, or falsifying records and reports shall be ineligible to again apply for certification as an operator for a minimum of five years. When an operator whose certificate has been revoked has applied for a certificate after the minimum time has passed, the Board shall determine whether the operator has taken appropriate action to address the circumstances that were the cause of the revocation. The Board may request records and review his/her experience, education, training and past performance. The Board may

RULEMAKING HEARINGS

request the former operator's presence at a meeting of the Board and interview him/her to assess the potential of future violations. After the reviews, the Board shall decide to accept or refuse the application.

Authority: T.C.A. §§ 4-5-101 et seq., 4-5-202, 68-221-906, 68-221-910, 68-221-911, and 68-221-915.

Rule 1200-5-3-.13, Effective Date, is amended by deleting the language in its entirety.

OTHER INFORMATION

The Fleming Training Center has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review only at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
Suite E-645, Perimeter Park
2510 Mount. Moriah Road
Memphis, TN 38115-1520
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305-4316
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
Suite 220 - State Plaza
2700 Middlebrook Pike
Knoxville, TN 37921-5602
(865) 594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The Draft Rules Governing Water and Wastewater Operator Certification may also be accessed for review using the following website:

<http://www.tdec.net/fleming>

Copies are also available for review at the Fleming Training Center (see address below).

Fleming Training Center
2022 Blanton Drive
Murfreesboro, TN 37219
(615) 898-8090

RULEMAKING HEARINGS

Office hours for the Fleming Training Center are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Fleming Training Center; Attention: Mr. W. Brent Ogles; 2022 Blanton Drive, Murfreesboro, Tennessee 37219; telephone: (615) 898-8090 or fax: (615) 898-8064. However, such written comments must be received by the Fleming Training Center by 4:30 PM CDT, August 15, 2006, in order to assure consideration. For further information, contact Mr. W. Brent Ogles at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the May 18, 2006. (05-14)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten(10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of -TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-1 GENERAL RULES

Rule 1200-13-1-.07 Medicaid Exclusions is deleted in its entirety.

Rule 1200-13-1-.16 Medicaid Dental Program is deleted in its entirety.

Rule 1200-13-1-.19 Medicaid Assurance of Transportation is deleted in its entirety.

Rule 1200-13-1-.20 Communication Aid Device is deleted in its entirety.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-29)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-1 GENERAL RULES

Parts 3. and 4. of subparagraph (c) of paragraph (5) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new parts 3. and 4. which shall read as follows:

3. An individual shall have one or more caregivers, as specified in (6)(a). An individual shall have a 24-hour caregiver unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety and welfare of the individual can be assured, through the provision of a caregiver and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed and updated by the Administrative Lead Agency. A caregiver agreement is required in order to ensure the health, safety and welfare of the individual. The caregiver may, but is not required to, reside in the same household with the individual.
4. An individual who does not have a caregiver 24 hours per day 7 days per week shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional and social needs and capabilities, and that is approved, monitored and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall include:
 - (i) The medical, functional and social needs and capabilities of the individual, and how such can be met without jeopardizing the health, safety and welfare of the individual;

RULEMAKING HEARINGS

- (ii) The identified caregiver(s);
- (iii) Personal Emergency Response Systems which are designed to enable Enrollees who meet the requirements of (2)(e) to secure help in an emergency; and
- (iv) Other services, devices and supports that ensure the health, safety and welfare of the Enrollee.

Subparagraph (d) of paragraph (5) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

- (d) An individual who is capable of living alone or independently without caregiver assistance and without receiving any waiver services or receiving only minimal waiver services shall not be eligible for enrollment or continued enrollment in the Waiver.

Subparagraphs (a) and (b) of paragraph (6) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a) and (b) which shall read as follows:

- (a) Caregiver assistance shall be provided by one or more competent individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to monitor the enrollee as specified in the Safety Plan.
- (b) One or more caregivers shall be available as specified in the Individual Plan of Care and the Safety Plan. Enrollees who do not have a 24-hour caregiver shall have a Personal Emergency Response System and shall clearly be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.

Part 5. of subparagraph (a) of paragraph (8) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 5. which shall read as follows:

- 5. A signed Caregiver Agreement Form completed by each caregiver; and

The introductory sentence of subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new introductory sentence, which shall read as follows:

- (a) An individual may be refused enrollment or involuntarily disenrolled from the Waiver for any of the following reasons:

Part 7, of subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 7 which shall read as follows:

- 7. The Enrollee no longer has a caregiver, as defined herein, or the caregiver is unwilling or unable to comply with the caregiver agreement, and an alternative caregiver cannot be arranged within ten (10) calendar days.

RULEMAKING HEARINGS

Subparagraph (a) of paragraph (12) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled is amended by adding parts 12. and 13. which shall read as follows:

12. The individual is receiving Private Duty Nursing services through his/her Managed Care Organization that are identical, nearly identical or significantly overlapping with the services covered in this waiver program.
13. The individual applies for or enrolls in the Home and Community Based Services (HCBS) program primarily as a means to establish and/or maintain TennCare eligibility or to by-pass TennCare service limits and refuses to accept a sufficient amount, scope and duration of HCBS waiver covered services to reasonably demonstrate the need for HCBS care.

Subparagraphs (a), (n) and (o) of paragraph (14) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a), (n) and (o) which shall read as follows:

- (a) Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and that the Enrollee can be adequately cared for in the home setting;
- (n) Assurance that each Enrollee has an appropriate caregiver or caregivers pursuant to signed agreement(s) with the Administrative Lead Agency;
- (o) Assurance of the safety of the Enrollee through appropriate services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;

Subparagraph (e) of paragraph (15) of rule 1200-13-1-.17 Statewide Home and Community Based Services Waiver for the Elderly and Disabled, are deleted in their entirety and replaced with new subparagraph (e) which shall read as follows:

- (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of enrollees for the 10 days combined leave allowed for therapeutic and hospital leave normally available to Nursing Facility patients pursuant to rule 1200-13-1-.06(4).

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-30)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-1 GENERAL RULES

Parts 3. and 4. of subparagraph (c) of paragraph (5) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties are deleted in their entirety and replaced with new parts 3. and 4. which shall read as follows:

3. An individual shall have one or more caregivers, as specified in (6)(a). An individual shall have a 24-hour caregiver unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety and welfare of the individual can be assured, through the provision of a caregiver and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed and updated by the Administrative Lead Agency. A caregiver agreement is required in order to ensure the health, safety and welfare of the individual. The caregiver may, but is not required to, reside in the same household with the individual.
4. An individual who does not have a caregiver 24 hours per day 7 days per week shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional and social needs and capabilities, and that is approved, monitored and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall include:
 - (i) The medical, functional and social needs and capabilities of the individual, and how such can be met without jeopardizing the health, safety and welfare of the individual;

RULEMAKING HEARINGS

- (ii) The identified caregiver(s);
- (iii) Personal Emergency Response Systems which are designed to enable Enrollees who meet the requirements of (2)(e) to secure help in an emergency; and
- (iv) Other services, devices and supports that ensure the health, safety and welfare of the Enrollee.

Subparagraph (d) of paragraph (5) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

- (d) An individual who is capable of living alone or independently without caregiver assistance and without receiving any waiver services or receiving only minimal waiver services shall not be eligible for enrollment or continued enrollment in the Waiver.

Subparagraphs (a) and (b) of paragraph (6) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties are deleted in their entirety and replaced with new subparagraphs (a) and (b) which shall read as follows:

- (a) Caregiver assistance shall be provided by one or more competent individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to monitor the enrollee as specified in the Safety Plan.
- (b) One or more caregivers shall be available as specified in the Individual Plan of Care and the Safety Plan. Enrollees who do not have a 24-hour caregiver shall have a Personal Emergency Response System and shall clearly be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.

Part 5. of subparagraph (a) of paragraph (8) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties is deleted in its entirety and replaced with a new part 5. which shall read as follows:

- 5. A signed Caregiver Agreement Form completed by each caregiver; and

The introductory sentence of subparagraph (a) of paragraph (12) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties is deleted in its entirety and replaced with a new introductory sentence which shall read as follows:

- (a) An individual may be refused enrollment or involuntarily disenrolled from the Waiver for any of the following reasons:

Part 7. of subparagraph (a) of paragraph (12) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties is deleted in its entirety and replaced with a new part 7. which shall read as follows:

- 7. The Enrollee no longer has a caregiver, as defined herein, or the caregiver is unwilling or unable to comply with the caregiver agreement, and an alternative caregiver cannot be arranged within ten (10) calendar days.

RULEMAKING HEARINGS

Subparagraph (a) of paragraph (12) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties is amended by adding parts 11. and 12. which shall read as follows:

11. The individual is receiving Private Duty Nursing services through his/her Managed Care Organization that are identical, nearly identical or significantly overlapping with the services covered in this waiver program.
12. The individual applies for or enrolls in the Home and Community Based Services (HCBS) program primarily as a means to establish and/or maintain TennCare eligibility or to by-pass TennCare service limits and refuses to accept a sufficient amount, scope and duration of HCBS waiver covered services to reasonably demonstrate the need for HCBS care.

Subparagraphs (a), (o) and (p) of paragraph (14) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties are deleted in their entirety and replaced with new subparagraphs (a), (o) and (p) which shall read as follows:

- (a) Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and that the Enrollee can be adequately cared for in the home setting;
- (o) Assurance that each Enrollee has an appropriate caregiver or caregivers pursuant to signed agreement(s) with the Administrative Lead Agency;
- (p) Assurance of the safety of the Enrollee through appropriate services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;

Subparagraph (e) of paragraph (15) of rule 1200-13-1-.26 Home and Community Based Services Waiver for the Elderly and Disabled in Davidson, Hamilton, and Knox Counties are deleted in their entirety and replaced with new subparagraph (e) which shall read as follows:

- (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of enrollees for ten (10) days combined leave allowed for both therapeutic and hospital leave normally available to Nursing Facility patients pursuant to rule 1200-13-1-.06(4).

Authority: T.C.A. §§4-5-202, 4-5-203. 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the May 31st day of May, 2006. (05-31)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-1 GENERAL RULES

Parts 3. and 4. of subparagraph (c) of paragraph (5) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new parts 3. and 4. which shall read as follows:

3. An individual shall have one or more caregivers, as specified in (6)(a). An individual shall have a 24-hour caregiver unless it is determined by an assessment that the needs of the individual can be met, and that the health, safety and welfare of the individual can be assured, through the provision of a caregiver and through provision of a Personal Emergency Response System. Documentation of such assessment shall be included in an individualized Safety Plan that is developed, reviewed and updated by the Administrative Lead Agency. A caregiver agreement is required in order to ensure the health, safety and welfare of the individual. The caregiver may, but is not required to, reside in the same household with the individual.
4. An individual who does not have a caregiver 24 hours per day 7 days per week shall have an individualized Safety Plan that is based on an assessment of the individual's medical, functional and social needs and capabilities, and that is approved, monitored and updated as needed, but no less frequently than annually, by the Administrative Lead Agency. The Safety Plan shall include:
 - (i) The medical, functional and social needs and capabilities of the individual, and how such can be met without jeopardizing the health, safety and welfare of the individual;

RULEMAKING HEARINGS

- (ii) The identified caregiver(s);
- (iii) Personal Emergency Response Systems which are designed to enable Enrollees who meet the requirements of (2)(e) to secure help in an emergency; and
- (iv) Other services, devices and supports that ensure the health, safety and welfare of the Enrollee.

Subparagraph (d) of paragraph (5) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new subparagraph (d) which shall read as follows:

- (d) An individual who is capable of living alone or independently without caregiver assistance and without receiving any waiver services or receiving only minimal waiver services shall not be eligible for enrollment or continued enrollment in the Waiver.

Subparagraphs (a) and (b) of paragraph (6) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a) and (b) which shall read as follows:

- (a) Caregiver assistance shall be provided by one or more competent individuals, aged 18 or older, who sign an agreement with the Administrative Lead Agency to monitor the enrollee as specified in the Safety Plan.
- (b) One or more caregivers shall be available as specified in the Individual Plan of Care and the Safety Plan. Enrollees who do not have a 24-hour caregiver shall have a Personal Emergency Response System and shall clearly be mentally and physically capable of using it based on an assessment by the Administrative Lead Agency.

Part 5. of subparagraph (a) of paragraph (8) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 5. which shall read as follows:

- 5. A signed Caregiver Agreement Form completed by each caregiver; and

The introductory sentence of subparagraph (a) of paragraph (12) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new introductory sentence which shall read as follows:

- (a) An individual may be refused enrollment or involuntarily disenrolled from the Waiver for any of the following reasons:

Part 7. of subparagraph (a) of paragraph (12) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is deleted in its entirety and replaced with a new part 7. which shall read as follows:

- 7. The Enrollee no longer has a caregiver, as defined herein, or the caregiver is unwilling or unable to comply with the caregiver agreement, and an alternative caregiver cannot be arranged within ten (10) calendar days.

Subparagraph (a) of paragraph (12) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is amended by adding parts 11. and 12. which shall read as follows:

RULEMAKING HEARINGS

11. The individual is receiving Private Duty Nursing services through his/her Managed Care Organization that are identical, nearly identical or significantly overlapping with the services covered in this waiver program.
12. The individual applies for or enrolls in the Home and Community Based Services (HCBS) program primarily as a means to establish and/or maintain TennCare eligibility or to by-pass TennCare service limits and refuses to accept a sufficient amount, scope and duration of HCBS waiver covered services to reasonably demonstrate the need for HCBS care.

Subparagraphs (a), (o) and (p) of paragraph (14) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled are deleted in their entirety and replaced with new subparagraphs (a), (o) and (p) which shall read as follows:

- (a) Pre-enrollment screening of individuals, including assessment of the individual's medical, functional, and social capabilities and needs; appropriateness for placement in the Waiver; and that the Enrollee can be adequately cared for in the home setting;
- (o) Assurance that each Enrollee has an appropriate caregiver or caregivers pursuant to signed agreement(s) with the Administrative Lead Agency;
- (p) Assurance of the safety of the Enrollee through appropriate services, supervision, and other services and supports, as described in the Individual Plan of Care and the Safety Plan;

Subparagraph (e) of paragraph (15) of rule 1200-13-1-.27 Shelby County Waiver for the Elderly and Disabled is deleted in its entirety and replaced with new subparagraph (e) which shall read as follows:

- (e) Reimbursement shall not be made to the provider of Waiver Services on behalf of enrollees for the ten (10) days combined leave allowed for therapeutic and hospital leave normally available to Nursing Facility patients pursuant to rule 1200-13-1-.06(4).

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-32)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten(10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-13-13 TENNCARE MEDICAID

Paragraph (23) of rule 1200-13-13-.01 Definitions is deleted in its entirety and replaced with a new paragraph (23) which shall read as follows:

- (23) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for their TennCare coverage and covered services. Cost sharing includes premiums and/or copayments.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of May, 2006. (05-26)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of -TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-13 TENNCARE MEDICAID

Subparagraph (a) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) TennCare managed care contractors (MCCs) shall cover the following services and benefits subject to any applicable limitations described herein.

- 1. Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.

There are two instances in which an MCC may not refuse to pay for a service solely because of a lack of prior authorization. These instances are as follows:

- (i) EPSDT services. MCCs shall provide all medically necessary, covered services regardless of whether the need for such services was identified by a provider whose services had received prior authorization from the MCC or by an in-network provider.
- (ii) Emergency services. MCCs shall not require prior authorization or approval for covered services rendered in the event of an emergency, as defined in these rules. Such emergency services may be reviewed on the basis of medical necessity or other MCC administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.

RULEMAKING HEARINGS

2. MCCs shall not impose any service limitations that are more restrictive than those described herein; however, this shall not limit the MCC's ability to establish procedures for the determination of medical necessity.
3. Services for which there is no federal financial participation (FFP) are not covered.
4. Non-covered services are non-covered regardless of medical necessity.

Paragraph (2) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (2) which shall read as follows:

(2) Use of Cost Effective Alternative Services.

MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if (a) these services are listed in the MCC contract and/or in TSOP 032 and (b) they are medically appropriate and cost effective. Use of approved cost effective alternative services is made at the sole discretion of the MCC.

Paragraph (3) of rule 1200-13-13-.04 Covered Services is deleted in its entirety.

Paragraph (4) of rule 1200-13-13-.04 Covered Services renumbered as (3) is deleted in its entirety and replaced with a new renumbered paragraph (3) which shall read as follows:

(3) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraph (1) and (2) above. The managed care contractors shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care contractor's discretion. The dollar amounts applied to the limitations shall be based only upon the managed care contractor's payments for those services delivered on and after the enrollee's 21st birthday and shall exclude payments made by the enrollee in the form of premiums and co-payments. Children under age 21 are exempt from benefit limitations on medically necessary covered services.

Detoxification	Ten (10) days per lifetime
Substance abuse benefits (Inpatient and outpatient)	\$30,000

Paragraph (5) of rule 1200-13-13-.04 Covered Services renumbered as (4) is deleted in its entirety and replaced with a new renumbered paragraph (4) which shall read as follows:

(4) Emergency Medical Services.

Emergency medical services shall be available twenty-four (24) hours per day, seven (7) days per week. Coverage of emergency medical services shall not be subject to prior authorization by the MCC but may include a requirement that notice be given to the MCC of use of out-of-plan emergency services. However, such requirements shall provide at least a twenty-four (24) hour time frame after the emergency for notice to be given to the MCC.

RULEMAKING HEARINGS

Paragraphs (6), (7), (8), (9), (10), and (11) of rule 1200-13-13-.04 Covered Services are deleted in their entirety and subsequent paragraphs renumbered accordingly.

Paragraph (12) renumbered as paragraph (5) of rule 1200-13-13-.04 Covered Services title “Hospital Discharge as of January 1, 2003” is deleted in its entirety and replaced with a new title “Hospital Discharges” so as amended the renumbered paragraph (5) title shall read as follows:

(5) Hospital Discharges.

Paragraph (13) of rule 1200-13-13-.04 Covered Services is renumbered as paragraph (6).

Authority: *T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-21)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-13-13 TENNCARE MEDICAID

Part 48. of subparagraph (b) of paragraph (3) of rule 1200-13-13-.10 Exclusions is deleted in its entirety and replaced with a new part 48. which shall read as follows:

48. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-33)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-13-13 TENNCARE MEDICAID

Subparagraph (a) of paragraph (7) of Rule 1200-13-13-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. Failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall result in automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-13-.11(8).

Authority: T.C.A. 4-5-202, 4-5-203. 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-22)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of -TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-14 TENNCARE STANDARD

Rule 1200-13-14-.01 Definitions is amended by adding a new paragraph (27). The current paragraph (27) will be renumbered as (28) and subsequent paragraphs will be renumbered accordingly so as amended the new paragraph (27) shall read as follows:

- (27) DEMAND LETTER shall mean a letter sent by TennCare to a TennCare Standard enrollee with premium obligations notifying the enrollee that he is a least 60 days delinquent in his/her premium payments.

Paragraph (22) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (22) which shall read as follows:

- (22) COST SHARING shall mean the amounts that certain enrollees in TennCare are required to pay for their TennCare coverage and covered services. Cost sharing includes premiums and/or copayments.

Paragraph (108) of rule 1200-13-14-.01 Definitions is deleted in its entirety and replaced with a new paragraph (108) which shall read as follows:

- (108) TENNCARE STANDARD shall mean that part of the TennCare Program which provides coverage for Tennessee residents who are not eligible for Medicaid but who meet the requirements for TennCare Standard that are outlined in these rules.

RULEMAKING HEARINGS

Rule 1200-13-14-.05 Enrollee Cost Sharing is deleted in its entirety and replaced with a new rule 1200-13-14-.05 which shall read as follows:

1200-13-14-.05 ENROLLEE COST SHARING.

- (1) Persons who are enrolled in TennCare Standard have premium obligations corresponding to their family size and income. The premium schedule is shown below:

Percentage of Poverty	0% - 99%	100% - 149%	150% - 199%	200% - 249%	250% - 299%
Monthly Premium (Individual)	\$0	\$20	\$35	\$100	\$150
Monthly Premium (Family of 2 or more)	\$0	\$40	\$70	\$250	\$375

Percentage of Poverty	300% - 349%	350% - 399%	400% - 499%	500% - 599%	600% and over
Monthly Premium (Individual)	\$200	\$250	\$350	\$450	\$550
Monthly Premium (Family of 2 or more)	\$500	\$625	\$875	\$1,125	\$1,375

- (2) Premium requirements.

- (a) Individuals determined eligible for TennCare and who are required to pay premiums will be sent a notice indicating the amount of the premium. Premium payments are due on the first day of each month.
- (b) Monthly premium statements are sent to enrollees with premium obligations. If the enrollee is delinquent in his payments, the monthly premium statements will so advise him.
- (c) At such time as (1) the enrollee has received at least two premium statements advising him of his arrearage AND (2) he is 60 days in arrears on his premium payments, coverage may be terminated for non-payment of premiums.
 1. Enrollees who are in arrears two months in premium payments will be sent a notice of delinquency (a "demand letter"). The notice will identify the specific payments, including month and amount, that are past due. The demand letter will serve as notice to the individual that he/she will be terminated from TennCare Standard unless he/she pays the amount due within 30 days. The enrollee has the right to appeal that he/she is in fact current with his/her payments or that the premium amounts being charged are not the premium amounts he/she has been assigned.

RULEMAKING HEARINGS

2. If at least partial payment is received by the Bureau of TennCare within 30 days after the date of the demand letter, the enrollee will no longer be 60 days in arrears, and coverage will continue without interruption. "Partial payment" will be payment sufficient to make the enrollee no longer 60 days in arrears. However, remaining past due amounts will continue to accrue. If the enrollee is again 60 days in arrears when the next cycle of demand letters is processed, the enrollee will again receive a demand letter and may subsequently be terminated in accordance with these rules.
3. If an enrollee files an appeal in response to his demand letter by the 30th day following the date of the notice, coverage will not be terminated on the 30th day, pending resolution of the appeal. The premium appeal will be processed by DHS in accordance with its rules at 1240-5.
4. If the enrollee does not pay at least a partial payment or file an appeal by the 30th day following the demand letter, his/her TennCare Standard coverage will be terminated. A termination notice will be sent with due process appeal rights. The date of termination is the date of notice. An enrollee may appeal his notice of termination, but he is not entitled to continuation of benefits during the appeal. If the appeal is decided in his/her favor, he/she will be reinstated retroactively to the date of termination.

(3) There are no deductibles or out-of-pocket maximums in TennCare Standard.

(4) Copayments.

(a) TennCare Standard enrollees whose income is equal to or greater than 100% of poverty shall pay copayments for services other than preventive services. Preventive services are identified in Rule 1200-13-14-.04(3).

(b) Copayment amounts are as shown below:

Benefit	Copayment if income is 0%-99% of poverty	Copayment if income is 100%-199% of poverty	Copayment if income is 200% of poverty or above
Hospital emergency room use for non-emergency services	\$0	\$25 (waived if admitted)	\$50 (waived if admitted)
Primary care provider services other than preventive care	\$0	\$5	\$10
Community Mental Health Agency services other than preventive care	\$0	\$5	\$10
Physician specialists	\$0	\$15	\$25
Prescription or refill	\$0	\$3 for covered branded prescription; \$0 for covered generics	\$3 for covered branded prescription; \$0 for covered generics

RULEMAKING HEARINGS

Benefit	Copayment if income is 0%-99% of poverty	Copayment if income is 100%-199% of poverty	Copayment if income is 200% of poverty or above
Inpatient hospital admission	\$0	\$100	\$200

- (c) Managed care contractors participating in the TennCare program shall be specifically prohibited from waiving, or discouraging TennCare enrollees from paying, the amounts described in this provision.
- (d) Providers may not refuse to deliver a covered service to an enrollee because of the enrollee's failure or inability to make his copay.
- (e) Enrollees who receive financial settlements, awards or judgments, for instance, as the result of accidents or negligence, shall have their income levels adjusted retroactively to the date of the incident resulting in the settlement or other payment, and may be assessed additional cost sharing obligations commensurate with their adjusted income level retroactive to that date.
- (f) Pharmacy and psychiatric pharmacy copayments.
 - 1. All TennCare Standard enrollees with incomes at or above poverty who receive pharmacy service have nominal copayments for the services. The copays are \$3.00 for each covered branded drug and \$0 for each covered generic drug. Drugs which exceed the limit of five (5) prescriptions or refills per month per enrollee are not covered unless they are on the shortlist. Family planning drugs and emergency services are exempt from copay.
 - 2. The following groups (adults and children) are exempt from pharmacy copays:
 - (i) Individuals receiving hospice services who provide verbal or written notification of such to the pharmacy provider at the point of service;
 - (ii) Individuals who are pregnant who provide verbal or written notification of such to the pharmacy provider at the point of service; and
 - (iii) Individuals who are receiving services in a Nursing Facility, an Intermediate Care Facility for the Mentally Retarded, or a Home and Community Based Services waiver.
 - 3. The seventy-two (72) hour emergency supply of a medication in an emergency situation, as described in rule 1200-13-14-.11, shall not be subject to the pharmacy copayment requirement.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of May, 2006. (05-27)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of -TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-13-13 TENNCARE MEDICAID

Subparagraph (a) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) TennCare managed care contractors (MCCs) shall cover the following services and benefits subject to any applicable limitations described herein.

- 1. Any and all medically necessary services may require prior authorization or approval by the MCC, except where prohibited by law.

There are two instances in which an MCC may not refuse to pay for a service solely because of a lack of prior authorization. These instances are as follows:

- (i) Preventive, diagnostic, and treatment services for persons under age 21. MCCs shall provide all medically necessary, covered services regardless of whether the need for such services was identified by a provider whose services had received prior authorization from the MCC or by an in-network provider.
- (ii) Emergency services. MCCs shall not require prior authorization or approval for covered services rendered in the event of an emergency, as defined in these rules. Such emergency services may be reviewed on the basis of medical necessity or other MCC administrator requirements, but cannot be denied solely because the provider did not obtain prior authorization or approval from the enrollee's MCC.

RULEMAKING HEARINGS

2. MCCs shall not impose any service limitations that are more restrictive than those described herein; however, this shall not limit the MCC's ability to establish procedures for the determination of medical necessity.
3. Services for which there is no federal financial participation (FFP) are not covered.
4. Non-covered services are non-covered regardless of medical necessity.

Paragraph (2) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (2) which shall read as follows:

(2) Use of Cost Effective Alternative Services.

MCCs shall be allowed, but are not required, to use cost effective alternative services if and only if (a) these services are listed in the MCC contract and/or in TSOP 032 and (b) they are medically appropriate and cost effective. Use of approved cost effective alternative services is made at the sole discretion of the MCC.

Paragraph (3) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (3) which shall read as follows:

(3) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraph (1) and (2) above. The managed care contractors shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care contractor's discretion. The dollar amounts applied to the limitations shall be based only upon the managed care contractor's payments for those services delivered on and after the enrollee's 21st birthday and shall exclude payments made by the enrollee in the form of premiums and co-payments. Children under age 21 are exempt from benefit limitations on medically necessary covered services.

Detoxification	Ten (10) days per lifetime.
Substance abuse benefits (Inpatient and outpatient)	\$30,000

Paragraph (4) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (4) which shall read as follows:

(4) Emergency Medical Services.

Emergency medical services shall be available twenty-four (24) hours per day, seven (7) days per week. Coverage of emergency medical services shall not be subject to prior authorization by the MCC but may include a requirement that notice be given to the MCC of use of out-of-plan emergency services. However, such requirements shall provide at least a twenty-four (24) hour time frame after the emergency for notice to be given to the MCC.

Paragraph (5) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and subsequent paragraphs renumbered accordingly.

RULEMAKING HEARINGS

Paragraph (6) of rule 1200-13-14-.04 Covered Services renumbered as (5) "Screening, Diagnosis and Treatment Services (EPSDT) for individuals Under twenty-one (21)" title is changed to "Preventive, Diagnostic and Treatment Services for Individuals Under twenty-one (21)" so as amended renumbered paragraph (5) title shall read as follows: The content of the paragraph remains the same.

(5) Preventive, Diagnostic and Treatment Services for Individual under twenty-one (21).

Paragraphs (7), (8) and (9) of rule 1200-13-14-.04 Covered Services are deleted in their entirety and subsequent paragraphs are renumbered accordingly.

Paragraph (10) renumbered as (6) of rule 1200-13-14-.04 Covered Services title "Preventive Medical Services as of January 1, 2003" is changed to "Preventive Medical Services" so as amended the renumbered paragraph (6) title shall read as follows: The content of the paragraph remains the same.

(6) Preventive Medical Services.

Paragraph (10) renumbered as paragraph (6) of rule 1200-13-14-.04 Covered Services is amended by adding subparagraph (f) which shall read as follows:

(f) Mental health case management services

T1016 and H0004

Mental health case management

Paragraphs (11) and (12) of rule 1200-13-14-.04 Covered Services is deleted in their entirety and subsequent paragraph renumbered accordingly.

Paragraph (13) renumbered as (7) of rule 1200-13-14-.04 Covered Services title "Hospital Discharges as of January 1, 2003" is changed to "Hospital Discharges" so as amended the renumbered paragraph (7) title shall read as follows: The content of the paragraph remains the same.

(7) Hospital Discharges.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-25)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-13-13 TENNCARE MEDICAID

Part 48. of subparagraph (b) of paragraph (3) of rule 1200-13-14-.10 Exclusions is deleted in its entirety and replaced with a new part 48. which shall read as follows:

48. Vagus nerve stimulators, except after conventional therapy has failed in treating partial onset of seizures.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of May, 2006. (05-34)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.D.T. on the 18th day July 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

CHAPTER 1200-13-13 TENNCARE MEDICAID

Subparagraph (a) of paragraph (7) of Rule 1200-13-14-.11 Appeal Of Adverse Actions Affecting TennCare Services Or Benefits is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) MCCs must act upon a request for prior authorization within fourteen (14) days as provided in rule 1200-13-14-.11(1)(b)2. Failure by an MCC to act upon a request for a prior authorization within twenty-one (21) days shall result in automatic authorization of the requested service, subject to the provision of (7)(e) below, and to provisions relating to medical contraindication at rule 1200-13-14-.11(8).

Authority: T.C.A. §§ 4-5-202, 4-5-203. 71-5-105, 71-5-109; Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of May, 2006. (05-23)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 BOARD FOR LICENSING HEALTH CARE FACILITIES DIVISION OF HEALTH CARE FACILITIES

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 10:00 a.m. (CDST) on the 17th day of July, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-1 STANDARDS FOR HOSPITALS

CHAPTER 1200-8-2 STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

CHAPTER 1200-8-6 STANDARDS FOR NURSING HOMES

CHAPTER 1200-8-7 RESIDENTIAL HOME FOR AGED QUALITY ENABLING PROGRAM

CHAPTER 1200-8-10 STANDARDS FOR AMBULATORY SURGICAL TREATMENT CENTERS

CHAPTER 1200-8-11 STANDARDS FOR HOMES FOR THE AGED

CHAPTER 1200-8-15 STANDARDS FOR RESIDENTIAL HOSPICES

CHAPTER 1200-8-17 ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL REHABILITATION TREATMENT FACILITIES

RULEMAKING HEARINGS

**CHAPTER 1200-8-18
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL
TREATMENT FACILITIES**

**CHAPTER 1200-8-19
ALCOHOL AND OTHER DRUGS OF ABUSE
DUI SCHOOL FACILITIES**

**CHAPTER 1200-8-20
ALCOHOL AND OTHER DRUGS OF ABUSE PREVENTION
PROGRAM FACILITIES**

**CHAPTER 1200-8-21
ALCOHOL AND OTHER DRUGS OF ABUSE NON-RESIDENTIAL
NARCOTIC TREATMENT FACILITIES**

**CHAPTER 1200-8-22
ALCOHOL AND OTHER DRUGS OF ABUSE HALFWAY
HOUSE TREATMENT FACILITIES**

**CHAPTER 1200-8-23
ALCOHOL AND OTHER DRUGS OF ABUSE RESIDENTIAL
DETOXIFICATION TREATMENT FACILITIES**

**CHAPTER 1200-8-24
STANDARDS FOR BIRTHING CENTERS**

**CHAPTER 1200-8-25
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES**

**CHAPTER 1200-8-26
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING
HOME HEALTH SERVICES**

**CHAPTER 1200-8-27
STANDARDS FOR HOMECARE ORGANIZATIONS
PROVIDING HOSPICE SERVICES**

**CHAPTER 1200-8-28
STANDARDS FOR HIV SUPPORTIVE
LIVING FACILITIES**

**CHAPTER 1200-8-29
STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING
HOME MEDICAL EQUIPMENT**

**CHAPTER 1200-8-32
STANDARDS FOR END STAGE RENAL DIALYSIS CLINICS**

RULEMAKING HEARINGS

CHAPTER 1200-8-34 STANDARDS FOR HOMECARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES

CHAPTER 1200-8-35 STANDARDS FOR OUTPATIENT DIAGNOSTIC CENTERS

AMENDMENTS

Rule 1200-8-1-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (7), so that as amended, the new paragraph (7) shall read:

- (7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-208, 68-11-209, and 68-11-216.

Rule 1200-8-2-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (7), so that as amended, the new paragraph (7) shall read:

- (7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, and 68-11-213.

Rule 1200-8-6-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (14), so that as amended, the new paragraph (14) shall read:

- (14) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-7-.07, Hearings, is amended by adding the following language as new paragraph (4), so that as amended, the new paragraph (4) shall read:

- (4) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-201, 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-209, and 12-4-320 (Public Acts of 1986, chapter 927).

RULEMAKING HEARINGS

Rule 1200-8-10-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.

Rule 1200-8-11-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (9), so that as amended, the new paragraph (9) shall read:

- (9) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, and 68-11-221.

Rule 1200-8-15-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-17-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-18-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

RULEMAKING HEARINGS

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-19-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202 through 4-5-206, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206 through 68-11-209, and 68-11-213.

Rule 1200-8-20-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-21-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202 through 4-5-206, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206 through 68-11-209, and 68-11-213.

Rule 1200-8-22-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

RULEMAKING HEARINGS

Rule 1200-8-23-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202 through 4-5-206, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206 through 68-11-209, and 68-11-213.

Rule 1200-8-24-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (7), so that as amended, the new paragraph (7) shall read:

- (7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, and 68-11-209.

Rule 1200-8-25-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (8), so that as amended, the new paragraph (8) shall read:

- (8) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, 68-11-209, and 68-11-213.

Rule 1200-8-26-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (7), so that as amended, the new paragraph (7) shall read:

- (7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-27-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

RULEMAKING HEARINGS

Rule 1200-8-28-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, and 68-11-209.

Rule 1200-8-29-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (4), so that as amended, the new paragraph (4) shall read:

- (4) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-32-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, and 68-11-209.

Rule 1200-8-34-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (7), so that as amended, the new paragraph (7) shall read:

- (7) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209.

Rule 1200-8-35-.03, Disciplinary Procedures, is amended by adding the following language as new paragraph (6), so that as amended, the new paragraph (6) shall read:

- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, and 68-11-216.

RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 3rd day of May, 2006. (05-04)

RULEMAKING HEARINGS

DEPARTMENT OF HEALTH - 1200 BOARD FOR LICENSING HEALTH CARE FACILITIES DIVISION OF HEALTH CARE FACILITIES

There will be a hearing before the Board for Licensing Health Care Facilities to consider the promulgation of amendment of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-11-202 and 68-11-209. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room on the Ground floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 9:00 a.m. (CDST) on the 17th day of July, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Care Facilities to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Care Facilities, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-0508, (615) 741-7598.

For a copy of the entire text of this notice of rulemaking hearing visit the Department of Health's web page on the Internet at www.state.tn.us/health and click on "rulemaking hearings" or contact: Steve Goodwin, Health Facility Survey Manager, Division of Health Care Facilities, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-0508, (615) 741-7598.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-8-2 STANDARDS FOR PRESCRIBED CHILD CARE CENTERS

CHAPTER 1200-8-6 STANDARDS FOR NURSING HOMES

CHAPTER 1200-8-34 STANDARDS FOR HOME CARE ORGANIZATIONS PROVIDING PROFESSIONAL SUPPORT SERVICES

AMENDMENTS

Rule 1200-8-2-.04, Administration, is amended by adding the following language as new paragraph (9), so that as amended, the new paragraph (9) shall read:

- (9) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:
 - (a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;
 - (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation.

RULEMAKING HEARINGS

Postings shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-234, and 71-6-121.

Rule 1200-8-6-.05, Admissions, Discharges and Transfers, is amended by adding the following language as new paragraph (14), so that as amended, the new paragraph (14) shall read:

- (14) Any residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number: 888-277-8366.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 71-6-121.

Rule 1200-8-34-.04, Administration, is amended by adding the following language as new paragraph (18), so that as amended, the new paragraph (18) shall read:

- (18) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:
 - (a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;
 - (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation.

Postings shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, and 71-6-121.

The notice of rulemaking set out herein was properly filed in the Department of State on the 3rd day of May, 2006. (05-03)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 DIVISION OF ADULT AND FAMILY SERVICES

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor, Boardroom, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on Tuesday, July 18, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Anneita Dunbar, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

For a copy the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15th Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

SUBSTANCE OF PROPOSED RULES OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES ADULT AND FAMILY SERVICES DIVISION

CHAPTER 1240-1-50 FINANCIAL ELIGIBILITY REQUIREMENTS FAMILIES FIRST PROGRAM

AMENDMENTS

Rule 1240-1-50-.20 Standard Of Need/Income, is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-1-50-.20 STANDARD OF NEED/INCOME. The following table shows the maximum income level, consolidated standard of need, and the possible standard payment amounts and differential grant payment amounts (maximum payment per assistance group size) to be used in the Families First program to determine eligibility and amount of payment.

(1) Families First Cash Assistance Standards

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance group (AG), which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, shelter and utilities, transportation, medical care, personal incidentals, and school supplies. The CNS is used as the basis for determining the gross income standard (GIS), the standard payment amount (SPA), and the Differential Grant Payment Amount (DGPA).

RULEMAKING HEARINGS

- (b) Gross Income Standard (GIS). This standard is set at One Hundred Eighty-Five Percent (185%) of the consolidated need standard. If the gross countable income of an assistance group exceeds this standard, the Assistance Group (AG) is not eligible for Families First.
- (c) Standard Payment Amount (SPA). Tennessee does not meet One Hundred Percent (100%) of need as defined by the consolidated need standard. Rather, a maximum payment by family size, dependent on available State and Federal funds is paid, except in the instances specified in 1240-1-50-.20(e).
- (d) Differential Grant Payment Amount (DGPA). A Families First Assistance Group which meets any one of the criteria for exemption from Time Limited Assistance as specified in 1240-1-51-.01(4)(a) through (d), will be eligible for a grant based on the Differential Grant Payment Amount (DGPA), which is a maximum payment by family size, dependent on funds available, except in the instances specified in subparagraph (e) below.
- (e) Family Benefit Cap
 - 1. No additional benefits will be issued due to the birth of a child when the birth occurs more than ten (10) calendar months after the later of:
 - (i) the date of application for Families First, or
 - (ii) the date of implementation of the Families First program (September 1, 1996), as provided by T.C.A. § 71-3-151, unless:
 - (I) the child was conceived as the result of verified rape or incest;
 - (II) the child is the firstborn (including all children in the case of a multiple birth) of a minor included in the Families First grant who becomes a first-time minor parent;
 - (III) the child does not reside with his/her parent;
 - (IV) the child was conceived in a month the AG was not receiving Families First; or
 - (V) the child was already born prior to the later of the date of application for Families First or the date of implementation of Families First, and the child has entered or returned to the home.
 - 2. The additional child will be included in the need standard for the purpose of determining Families First eligibility. The income of the child, including child support, will be applied against the need standard in determining the Families First payment amount for the family. The child will be considered a Families First recipient for all other purposes, including Medicaid/TennCare coverage.
 - 3. The family benefit cap will not apply to a subsequent period of eligibility for families who reapply for Families First subsequent to receipt of cash assistance for an eighteen (18)-month eligibility period during which the child was born, as long as the reason for prior case closure was other than a failure to comply with work or child support enforcement requirements or other Personal Responsibility Plan

RULEMAKING HEARINGS

provisions, and the parent/caretaker had cooperated with the Department as defined in departmental policies for the Families First program.

- (i) Departmental policies and rules with which the parent/caretaker must cooperate include, but are not limited to:
 - (I) Child support cooperation requirements, such as identifying the absent parent, meeting with child support enforcement staff, submitting a child for blood testing, and testifying in court if necessary;
 - (II) Carrying out and fulfilling Personal Responsibility Plan provisions and requirements; or
 - (III) Carrying out and fulfilling Work Plan provisions and requirements.
- (f) An assistance payment is determined as follows:
 - 1. If the assistance group's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, the assistance group is not eligible.
 - 2. If the assistance group's net income is less than their consolidated need, the monthly grant amount is the smaller of a maximum payment amount by family size (SPA or DGPA, as appropriate) or the deficit if it is ten dollars (\$10) or more. If the deficit is one dollar (\$1) - nine dollars (\$9), the AG is eligible for Medicaid (TennCare) only, and is deemed to be a Families First recipient group.

In the case of an AG receiving Families First because one or both parents are unemployed, if the Principal Wage Earner (PWE) receives Unemployment Compensation (UC) the UC benefit is deducted from the grant amount determined after deducting all other countable income from the CNS, to determine the actual amount of Families First payment for the AG.
 - 3. The minimum monthly grant which can be paid is ten dollars (\$10).
- (g) Families First Need/Payment Standards
 - 1. Tables

RULEMAKING HEARINGS

TABLE I

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1197	1515	1782	2002	2185	2337	2466	2575	2671	2758
Consolidated Need Standard	647	819	963	1082	1181	1263	1333	1392	1444	1491
Maximum Payment (SPA)	95	142	185	226	264	305	345	386	425	467

Minimum Families First Payment is \$10 per month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2836	2910	2980	3047	3112	3169	3221	3263	3291	3302
Consolidated Need Standard	1533	1573	1611	1647	1682	1713	1741	1764	1779	1785
Maximum Payment (SPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per month for any Assistance Group

RULEMAKING HEARINGS

TABLE II

Number of Persons in Assistance Group	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	1197	1515	1782	2002	2185	2337	2466	2575	2671	2758
Consolidated Need Standard	647	819	963	1082	1181	1263	1333	1392	1444	1491
Maximum Payment (DGPA)	140	192	232	242	291	305	345	386	425	467

Minimum Families First Payment is \$10 per month for any Assistance Group

Number of Persons in Assistance Group	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	2836	2910	2980	3047	3112	3169	3221	3263	3291	3302
Consolidated Need Standard	1533	1573	1611	1647	1682	1713	1741	1764	1779	1785
Maximum Payment (DGPA)	508	549	589	630	670	711	750	790	831	871

Minimum Families First Payment is \$10 per month for any Assistance Group

2. The Families First standard payment amount (maximum payment) for an assistance group of three (3) persons represents 19.1% of the consolidated need for an assistance group of that size. The Families First maximum differential grant payment amount for an assistance group of three (3) persons represents 24.1% of the consolidated need for an assistance group of that size. The payments for groups composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentences which is necessary to maintain the payment at a level not more or less than that paid in fiscal year 2005-2006.
3. Standard for Families First Transitional Services
 - (i) Families First assistance groups and other low income families may receive transitional services after the Families First case closes.

RULEMAKING HEARINGS

- (ii) For purposes of this Part, “transitional services” is defined as services to assist the customer in attaining long-term self-sufficiency.
- (iii) Transitional services will be provided subject to the continued availability of state and/or federal funding.
- (iv) In order to receive these services, the assistance group’s gross monthly income must meet a standard of need.
- (v) The standard of need for transitional services under this Part is defined as Two Hundred Percent (200%) of the Federal poverty level for the assistance group family size. The standard of need for this Part does not apply to Transitional Child Care or Transitional Medicaid.

Authority: TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-151—71-3-165, 71-3-154(i); 71-3-155(e)-(g); Senate Bill 3914/House Bill 4025 (2006); 42 USCA §§ 601 et seq.; 45 CFR 233.20; and 42 USCA § 1315.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of May, 2006. (05-13)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning May 1, 2006 and ending May 31, 2006.

A handwritten signature in black ink, reading "Riley C. Darnell".

RILEY C. DARNELL
Secretary of State